A few Notes on the amendment of the Putni Regulation and its proposed incorporation with the Rent Law.

1. No good, I submit, can be gained by the incorporation of the Putni with the general Rent-law. It seems, on the contrary, desirable that the Putni-law should be kept separate and distinct. All the provisions on the subject should be embodied in a separate Act, thus preventing the confusion and difficulty which is likely otherwise to arise from the incorporation of the one law with the other. To putnidars especially, with their imperfect acquaintance with law, the incorporation cannot fail to be objectionable as throwing in their way difficulties likely to prevent them from distinguishing which provisions will apply to putnis and which not.

2. It is more than sixty years since Regulation VIII of 1819 was passed, and experience has shown how satisfactorily it has worked. It cannot be doubted that it is one of the most successful instances of legislation which the present statute book of the country can boast. In their report on the first Bill, the Rent Commissioners, in speaking of the Putni-law, bore testimony to the fact that the procedure is seldom abused, and "that it is extremely rare to hear even the allegation that a tenure has been brought to sale without arrears being *bond fide* due." The general and principal features of the existing law, therefore, ought to be kept unaltered; but certain additions and alterations here and there are necessary, and deserve careful consideration. Some of the amendments I am about to propose may be regarded as part of the existing law on the subject, based as they are on the rules of the Board of Revenue and long established practice. But there are others which are new and necessary, and the effect of which would be to check unnecessary litigation and place things on a more satisfactory basis. It is these especially which I am desirous to bring forward for the consideration of the Legislature.

3. Although the present Rent Bill cannot certainly be characterized as on the whole a happy attempt at legislation, yet its proposed provisions with regard to the registration of transfers of, and succession to, tenures would be undoubted improvements upon the existing law. The importance and the necessity of landlords knowing the names of persons whom they are to consider as their tenants, and whom they should look to for payment of rent, cannot be called in question. As to putnidars, it cannot be denied that they have hitherto as a rule neglected to register their names in the zemindar's *sherista*. The necessity of some provision more adequate and stringent than those already existing for compelling registration of tenures in the zemindar's sherista follows, therefore, as a necessary corollary from the above. That zemindars have often to suffer on account of the disinclination and neglect of the putnidars to register their names, is a fact too obvious to need any illustration. For a putnidar to register his name in the zemindar's sherista is very rare, and unless certain penalties and disabilities are attached to non-registration, this unsatisfactory state of things is likely to remain unaltered. At present a putnidar considers it his interest not to have his name recorded in the zemindar's sherista in the place of the old tenant. If the latter is dead, it is his interest to keep the zemindar ignorant of the fact, that he may, in case of a sale of his taluq under the Regulation, for default in the payment of arrears, be able to put forward as a ground for reversal of the sale that the proceedings had been conducted in the name of a dead person. In the present state of the law a technical objection of this nature, independent of any loss caused to the putnidar in consequence of the irregularity complained of, would be a sufficient ground for setting aside a sale. When, therefore, a putnidar finds that the notification of sale does not run in his name, he need not pay the arrears, for he knows that the sale will be set aside; and he will be able to recover from the zemindar costs of the suit—costs which may exceed those he really incurs. For he may in such a suit engage a single junior pleader paying him less than half fees, while recovering the full amount of pleaders' fees as prescribed by law. Thus the putnidar in such cases takes advantage of his own wrong, and for this reason, amongst others, putnidars are not at all anxious to enlighten zemindars as to the present ownership of their tenures.

4. As regards holdings and tenures other than putnis, it is to a certain extent the interest of the tenant to have his name registered in the zemindar's sherista, because otherwise a suit for arrears of rent may be brought against the registered tenant and a decree obtained against him, and perhaps in some cases, *e.g.*, where the tenure is sublet, it may be sold without the tenant coming to know of it. This cannot occur with respect to putni tenures. Putni-sales are periodical, and it is well-known when they take place. The fact that the sale-proceedings take place in the name of the registered tenant cannot affect the putnidar in the least. Why should a putnidar, then, be anxious to seek for registration and pay the prescribed fee when he has nothing to lose and something to gain by pursuing a contrary course? The necessity of additional provisions attaching certain penalties and disabilities to non-registration is, therefore, obvious. I would, therefore, propose that to the provisions on registration already existing in Regulation VIII of 1819, the provisions contained in sections 15 to 22 of the Rent Bill should be added. There should be a further provision embodying the principle of the ruling laid down in *Gossain Mongal Dass* v. *Roy Dhunput Sing* in Vol. 25 W.R., p. 152, that where a putnidar has omitted to register his name in the zemindar's sherista, the zemindar is not bound to recognize him as a tenant, and the latter has, therefore, no right to bring a suit against the former to set aside a putni sale. An exception ought to be made where the zemindar is guilty of fraud in any matter relating to the sale.

5. In setting aside a sale held in execution of a decree of a Civil Court, on the ground of irregularity in publishing or conducting it, it is necessary to prove—(1) that there were material irregularities in that respect, and (2) that substantial loss has been caused to the applicant by reason thereof. The law is different with regard to setting aside a putni-sale. As the case law now stands, a mere irregularity though not material, and without any proof or even allegation of any substantial loss having been caused thereby, would be a sufficient ground for the reversal of a sale. The wording of the Regulation, however, that a sale should be set aside on the putnidar's "establishing a sufficient plea," seems to me to be susceptible of a different construction from that which is now adopted. Why the law for setting aside a putni-sale should be different from that for setting aside an execution-sale, it is difficult to understand. Where a putni-sale has taken place for default in paying the arrears in accordance with the express terms of the lease, it is but fair to the zemindar that substantial loss to the owner of the putni on account of the irregularities complained of should be insisted upon as a condition precedent to the reversal of the sale.

6. Another point which ought to be noticed as needing amendment is the mode of publishing the notifications of putni-sale. The present law requires the publication of three notifications. One in the Collectorate, another at the zemindar's cutchery, and a third at the cutchery, or at the principal town or village in the land of the defaulter. The non-publication of the two first mentioned notices has seldom, if ever, been the ground of a reversal of a putni-sale. It is the publication of the third notice therefore which only need be now considered. The existing law on the subject as administered in the Courts has proved a source of very great hardship to the zemindar. The law requires that the third notice should be published by being stuck up at the cutchery, or at the principal town or village upon the land of the defaulter; that the peon who goes to serve the notice should bring back the receipt of the defaulter, or of the manager of the property, or in the event of inability to procure this, the signature of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot. If it appears from the tenor of the receipt or attestation in question that the notice has been published at any time previous to the 15th of the month (Bysack or Kartick as the case may be), it is a sufficient warrant for the sale to proceed on the day appointed. In case, the villagers object or refuse to sign their names in attestation, the peon must go to the cutchery of the nearest Munsif, or, if there be no Munsif, to the nearest thana, and there make a voluntary oath of the same having been duly published,—a certificate to which effect must be signed and sealed by the said officers and delivered to the peon.

7. That the publication of the notice is the real thing aimed at by the Regulation admits of no question. The object of the receipt, as laid down in the law, is to enable the zemindar to produce before the Collector some evidence which *primâ facie* would be sufficient warrant for the sale to proceed. Where the actual service of notice is satisfactorily established, a technical objection to the receipt, based on the ground of non-compliance with any of the formalities laid down in the law, ought not to be held a sufficient justification for the reversal of the sale. In the recent case between myself and Tarasunderi Debi and others, reported in 9 I. L. R., Cal. Series, p. 619, it has been held that where there is a controversy as to the service of notice, an objection as to the form of the receipt would be a sufficient ground for setting the sale aside. If by this is meant, that where there is not sufficient evidence to justify the Court in holding that notice has been served, the sale ought to be set aside, no one could with propriety complain. But if, on the other hand, what is meant is that whenever the service of notice is called in question, an objection as to the form of the receipt, if established, would be a sufficient ground for a reversal of the sale, then the precedent above cited would operate as a very great hardship on zemindars. The putnidar himself is seldom present in the taluk. The peon who goes to serve the notice in the mofussil may not personally know the manager of the property, and some deception may be practised upon him—a thing unfortunately not rare. The peon who in many cases does not know the gomasta or naib of the property after causing due publication of the notice sometimes obtains the signature of some person purporting to be that of the talukdar's naib or gomasta, and comes away under the *bonâ fide* impression that he has got a document evidencing the fact of the due publication of the notice of sale in the handwriting of the proper individual. But it sometimes happens that the putnidar's men to provide against the contingency of a putni-sale for default to pay the arrears, studiously puts down in the receipt as the putnidar's manager of the property and attesting witnesses the names of dead or fictitious persons; or, if the name of the real manager is given, it is by arrangement between the putnidar's men signed by somebody else. The peon generally a stranger to the place and parties, is unable, for obvious reasons, to detect the deception so practised, and the result is unfortunate for his employer. When such a receipt is produced in a Court to negative the allegation of non-service, the defaulting putnidar comes forward with proof that the attesting witnesses are dead or fictitious persons, or that the naib himself has not signed it, and with the receipt, the zemindar's case falls to the ground. The oath of the peon counts for nothing, and instead of being pronounced, as is very often really the case, the party deceived, he is charged with having palmed off upon his employer a false receipt. That the receipt itself is a very important piece of evidence in determining whether or not a proper service of the notice has been effected is admitted; but a mere technical objection or flaw with regard to it should not be made a ground for the reversal of a sale where actual service of the notice is otherwise sufficiently proved.

8. Such being then the present state of the law, let us now see whether, in lieu of the existing provisions for the service of notice in the mofussil, others could be substituted which, without prejudicing either party, are calculated to bring about more satisfactory results.

9. For this purpose, it would be necessary to see what were the objects of the legislature

in providing for the publication of a notice in the mofussil. The objects are (1) to give notice to the defaulter of the intended sale, (2) to give notice to purchasers, and (3) to give notice to under-tenants to enable them to protect the taluq by depositing the arrears.

10. It is obvious that intimation of the intended sale ought to be given to the above-named persons. This object, however, I beg leave to suggest, may, as a matter of fact, be sufficiently attained by the 1st and 2nd notices provided for by law. More than half a century has elapsed since the time when Regulation VIII of 1819 first came into operation, and under it half-yearly sales are held all over the country at stated intervals. It is, I submit, simply absurd for any man to say now, that he could not pay the rent, because he knew not when the sale was to take place. Besides, if a defaulting putnidar, or subordinate tenure-holder, or an intending purchaser wishes to ascertain whether a particular tenure has been advertized for sale, he has simply to go to the zemindar's cutchery or the Collector's office to assure himself of the fact. The *istahars* (sale notifications) hung up there will furnish either side with unimpeachable testimony of the fact as to whether a particular putni has been advertised for sale.

11. To take up one by one the three above-mentioned objects which were intended to be secured by service of the sale notification in the mofussil, I submit that, in order to give notice of the sale to the defaulters, a notification in the mofussil is not, for reasons already stated, at all necessary. The reasons which render a notice to tenant essential in a rent suit do not apply to the case of sales of putnis under the Regulation. A zemindar is at liberty to bring a rent suit at any time within three years from the last day of the Bengali year in which the rent is due. There is no knowing when such a suit will be brought, and a notice therefore is necessary. But putni-sales are periodical, and it is well-known throughout the length and breadth of the country when they are held. In a recent case, Mr. Justice Maclean observed "the putnidars in the Burdwan raj know very well that there is generally no neglect to bring the putni tenures to sale on the appointed day;" and further on, "that it is as certain as Aughran follows Kartick, that a sale would take place if rent is due, and there are numerous methods for the acquisition by plaintiff of knowledge that the sale would take place besides the affixing of a notice at Salmula, and the owners might be credited with the knowledge that, as they had certainly not paid their rent, they must do so to save the sale." It follows from the above that a notice of putni sale to the defaulter is not necessary.

12. As regards the second object of the notice in the mofussil, *viz.*, to give notice of the intended sale to purchasers, this, also, for reasons already stated, is hardly necessary. On every day fixed for the sale of putni taluqs, a large number of purchasers, putnidars, &c., are collected at the place of sale. That there is no lack in the number of purchasers must be admitted by everybody who knows the real state of things. In the Burdwan district more than 500 men are collected. Putnidars, too, prefer to give up their tenures at these sales, because they generally fetch a higher value there. Publication of a notice on the defaulting taluq has not, I think, the effect of adding to the number of purchasers. Everybody who is able and willing to purchase putni taluqs attends the Collectorate on sale days. There old friends meet, and the landed aristocracy of the district is gathered. Men who have acquired money in service or as merchants or in any other profession, and want to invest it in landed property, look forward to these sales as offering opportunities for the accomplishment of their wishes. In fact, at no other sale are so many purchasers gathered together. A notice, therefore, in the mofussil is not necessary so far as purchasers are concerned.

13. Thirdly, with regard to under-tenants, a reference to either of the first two notices would enable them easily to ascertain whether any particular putni has been advertized for sale. The rents of most of the putni taluqs are paid generally between the date of the application for sale and the date fixed for the sale, and the under-tenants have, if disposed to deposit the arrears, to ascertain from the zemindar's cutchery whether the arrears have been paid. The absence of the third notice will not, therefore, impose on them any additional trouble or place them in any worse position. Besides where a putni-sale has taken place, an under-tenant may bring forward his claim to the price he may have paid for the tenure, or for a just compensation for the loss sustained by him in consequence thereof by a regular suit. Clause 5 of section 17 of Regulation VIII of 1819 contains provisions for paying the under-tenant any sum, to which he has established a right, out of the surplus sale-proceeds. There is, therefore, a sufficient guarantee against the under-tenants suffering pecuniarily on account of the default of the putnidar. The absence of any privity of contract between the zemindar and the under-tenants of the putnidar should relieve the former from the obligation to give notice of the default to the latter. The putnidar being in privity with his under-tenants, and being liable to them for any loss resulting from the sale, the duty of giving the notice of default to the under-tenants ought to rest with him.

14. For the above reasons, I am of opinion that the notice in the mofussil is superfluous. I beg leave to point out that there seems to be no reasonable ground for drawing a distinction between a sale under this Regulation and one for arrears of Government revenue. Every putnidar knows very well when his taluq will be brought to sale if he makes default in the payment of rent, in the same way, as every holder of an estate paying revenue to Government knows when it will be brought to sale for his default in the payment of revenue. It is no more necessary to inform the putnidar of the liability to sale in the one case than in the other. The notifications which are held sufficient in a revenue-sale for the protection of the interests of parties concerned, ought also to be held sufficient in the case of putni-sales. Under Act XI of 1859, when an estate falls into arrears, the Collector is required to issue notices under sections 6 and 7 of the Act. It has been held by the High Court in the case of *Shajedunnessa*

and the Collector of Burdwan v. *Juggobundu Bannerjee*, that a revenue-sale ought not to be set aside for irregularities in the publication of notices under section 7, as these notices are simply intended as orders to the tenants prohibiting their paying rent to the defaulter. I may, therefore, leave section 7 out of consideration. Under section 6, where the revenue of an estate or share of an estate is below Rs. 500, two notices have to be issued, one to be stuck up in the District Judge's Cutchery, and the other in the Collector's Cutchery. When the revenue exceeds the said amount, a third notice has to be published in the Official Gazette. I would humbly suggest that, instead of the third notice for the sale of a putni tenure being served in the mofussil, it should be published in the Official Gazette, and in one or more of the local newspapers, if the Collector of the District so directs. If the proposed provision be adopted any one may, by purchasing an issue of the Gazette or local newspaper, obtain the desired information with the advantage of obtaining in a collected form the notices of all the tenures advertised for sale. This provision will be an effectual substitute for the provision for service of the notice in the mofussil. If, however, for any reason, which I do not at present appreciate, a notice in the mofussil should be deemed indispensably necessary, I would suggest that the third *istahar*, instead of being, as now, posted at the cutchery of the defaulter, should be posted at the Police thana within the limits of which the defaulting tenure is situate. This method, if adopted, will enable the defaulters, the under-tenure-holders, and the intending purchasers to learn without any appreciable difficulty what tenures within the limits of that thana are advertized for sale. Such an arrangement is calculated to commend itself to all parties, as by it neither side gets any undue advantage over the other. The putnidar will not suffer from the laches of the zemindar's agent, and the zemindar will not be made to suffer for the putnidar's cunning.

15. Section 14 of Regulation VIII of 1819 provides that it shall be competent to any person desirous of contesting the right of the zemindar to make the sale, whether *on the ground of there being no balance due or on any other ground*, to sue the zemindar for a reversal of the sale, and upon establishing a *sufficient plea* to obtain a decree with full costs and damages. It seems from the wording of the above section that it was not the intention of the Legislature that a sale should be set aside on merely technical grounds.

16. In the corresponding section of the present Bill (section 205) the language has been changed. It says—"any person aggrieved by a sale of a tenure effected under cover of the provision of this chapter, but not warranted by those provisions, may institute a suit," &c. Different constructions may be put upon this section if passed into law. The words "any person" are objectionable. The right to set aside a putni-sale ought to be given only to the registered tenant. Any one who is not the putnidar, or one of the putnidars, ought not to be allowed to sue. It is not meant probably by section 205 of the Bill to give any tenant or under-tenant of the putnidar a right to bring a suit for the reversal of a putni-sale, as there is no privity of contract between the putnidar's under-tenant or tenant and the zemindar: the former, if a loser by the sale, has a right of action against the putnidar for any damages sustained by him in consequence thereof. The words "any putnidar" ought therefore to be substituted for "any person" in section 205 of the Bill. The words "any party" in section 14 of the Regulation, considered along with the other words, are, I believe, always taken to mean any of the putnidars,—*i.e.*, any of the parties to the *Ashtam* sale. I am not aware of any instance of a putni-sale having been set aside at the suit of a person other than the putnidar. Reading the whole of section 14 of the Regulation, it seems to me that it was not the intention of the framers of the Regulation that any under-tenant or third party should have a right to set aside a putni-sale. For the above reasons the ambiguity contained in the words "any party" in section 14 of the Regulation ought to be avoided by substituting the words "any putnidar" in their place.

17. Do the words "not warranted by those provisions" in the above section mean that a technical defect as to the form of the receipt would be a ground for setting aside the sale? A technical defect like that ought not to be held to be a ground for setting aside a sale. The section ought to be made clearer.

18. The words "provided no sale shall be set aside unless it is proved that substantial loss has resulted to the plaintiff on account of a non-compliance with the provisions of this chapter" ought to be added after paragraph 1 of section 205 of the Bill.

19. Another matter which ought to be considered is the question of awarding costs when a putni-sale is set aside. This question, I think, ought to be left to the discretion of the Judge to be settled according to the circumstances of every particular case. Where the zemindar has acted fraudulently, the costs of the putnidar and the damages sustained by the purchaser ought to be decreed against him. But where fraud cannot be attributed to the zemindar, and the sale has been brought about by the default of the putnidar in payment of rent, it would not be fair to the zemindar that he should be made liable for the costs of the purchaser and the putnidar in every case. The question of costs ought, I think, to be left to be settled according to the circumstances of every particular case. The discretion of Courts ought not to be fettered in this respect.

20. There is no express provision in the law to the effect that if the 1st of Kartick or the 1st of Bysack, the dates fixed in the Regulation for the presentation of applications of half-yearly putni-sales, be a Sunday or a holiday, the applications may be presented on the day on which the Collectorate opens. The want of an express provision of law on the point is at present supplied by a rule of the Board of Revenue, authorizing the presentation of these applications on the next day which is not a Sunday or holiday. This latter provision of law ought to be embodied in the Act itself. A similar provision is necessary as regards the date of sale. Section 208 of the Rent Bill has been framed for that purpose.

21. Then a further question arises, *viz.*, as to whether when, in consequence of the Collectorate remaining closed on the 1st of Kartick or the 1st of Bysack, applications for sale are presented on the day on which the Collectorate opens, the sales are to be held a month or thirty days thereafter or on the 1st of Aughran and 1st of Bysack respectively. The rules of the Board of Revenue enjoin that the sale shall take place a month after. The want of a definite rule on the point in the law itself leads sometimes to that want of uniformity of practice which it ought to be the object of the law to secure. The established practice, based on the above-mentioned rule of the Board of Revenue, is to hold sales a month after the Collectorate re-opens, and this rule ought to be embodied in the law itself.

22. If the suggestion made above be adopted, considerations of convenience would require a slight modification in another portion of the law. The law lays down that the notices in the mofussil should be served previous to the 15th day of Bysack or 15th day of Kartick, as the case may be. The object of the Legislature is, it has been held in the case of *Huronath Gupta* v. *Juggunnath Roy*, reported in 11 W. R., p. 87, to give fifteen days' notice to the defaulter. Consequently, instead of the words "previous to the 15th day of Bysack," in section 8, clause 2, the words "previous to the 15th day before the date of sale" ought to be substituted. The want of such a provision frequently occasions very great difficulty to the zemindar. It sometimes happens that, owing to the Collectorate remaining closed on account of the Durga Puja holidays, applications for sale have to be presented on the 10th, 11th, and even sometimes the 12th day of Kartick. It then becomes a difficult thing for the zemindar to have the notice with reference to all the taluks served before the 15th, especially as it is not until the Collector fixes the date of sale that notices can be issued.

23. Where a Collector rejects an application for a putni-sale without sufficient cause, and his order is reversed by the superior Revenue Authorities after the date fixed for sale, the usual practice is to sell the tenure on another day fixed by the Collector. This practice ought to be recognized by the law; at any rate where it is found that the Collector has rejected the applications for the sale of a number of putni taluks without sufficient cause, and such a procedure is likely to cause hardship to the zemindar, power ought to be given to the Board of Revenue to fix another day for the *sale* of which due notice should be given in two successive issues of the official Gazette, and in such other manner as the Board thinks fit. Where the zemindar has to pay a very large sum of money as Government revenue, and most of his estates are let out in putni, there can be no doubt that it would occasion very great hardship to him, if the Collector were without sufficient cause to refuse to sell all or a large number of his taluks. The zemindar ought also to be allowed to include in the next half-yearly sale, the amount of any demand which, though made on the occasion of the preceding half-yearly sale, was on insufficient grounds not allowed to be summarily realized.

24. An express provision of law allowing putni-sales to take place if the zemindar dies during the pendency of the application for sale, is also necessary. Where the zemindar dies shortly before the date of sale, and an application is made by his heir for the substitution of his name in the Collector's towji, the petition for sale ought to be entertained. Meanwhile, the Collector should decide before the date fixed for sale, whether the petitioner has the right to have his name substituted in the towji in place of his predecessor in interest, and if he comes to a conclusion in favour of the petitioner, the latter ought to be allowed to proceed with the sale.

25. A zemindar should be allowed also to include dâk cess in his petition for sale under the Regulation in cases in which the putnidars have by express stipulations in the kabuleat bound themselves to pay the same. The amount of dâk cess is always small, but the costs of instituting a suit in Court and executing the decree obtained thereupon often exceeds six times the amount. The putnidar would be a gainer in a pecuniary point of view, if such a provision were inserted in the law, as the greater portion of the costs of the suit fall ultimately upon him; while the zemindar would be saved the trouble of instituting petty suits, as also certain expenses which he has to incur for the purpose, but which he cannot recover from the defaulter, *e.g.*, the cost of sending a man to file a plaint, paying a Muktear, &c. It might even be enacted that where the tenant objects, and the zemindar is not able to produce and file a decree either against the putnidar himself or his predecessor in interest establishing his right to dâk cess, or where the terms of the kabuleat do not establish beyond a doubt the liability of the putnidar to pay it, the amount claimed as dâk cess should be deducted from the *Ashtum* petition.

26. Why zemindars are still made liable to pay dâk cess, it is difficult to understand Section 4 of Act VIII of 1862, B.C., provides that no zemindari dâk shall be established or maintained between any two places between which a Government post for the time being exists. It happens, however, to be the case that almost all the lines which are now maintained out of the zemindari dâk fund, are between places in which there are Government post offices. It is time, therefore, that the dâk cess should be abolished.

27. The Bill does not anywhere define in what mode the jurisdiction of the Collector to entertain an application for the summary sale of a putni taluk is to be determined. The Regulation is also silent on this point, but Act VI of 1853 provides that an application for the sale of a putni taluk is to be presented in the Collectorate within the jurisdiction of which the putni is situate, and if a putni taluk is situate within the jurisdiction of different Collectors, then in that Collectorate within whose jurisdiction the greater portion of it is situate. The last portion of the provision frequently occasions very great difficulty. Considering that even Government

officers, with all the facilities they possess for obtaining information on any point, often feel a difficulty in ascertaining the locality of particular mouzahs, it may be readily imagined how difficult it would necessarily be for the zemindars to determine not only their locality but acreage. I would, therefore, propose that applications for the summary sales of putni should be ordinarily made in the Collectorate on the revenue roll of which the estate within which the putni is situate is borne, provided that where applications for the sale of a particular putni have been made for a certain number of years in a certain Collectorate, it shall be ordinarily made in that Collectorate. To the higher Revenue Authorities may be reserved the power of directing, for any sufficient reason, that any particular tenure should, for the future, be sold at any Collectorate other than that above indicated, and when such a direction is given, it should be published in two successive issues of the Government Gazette.

28. There ought further to be a section similar to section 8 of Act XI of 1859, declaring that no claim to abatement or remission of rent, unless the amount of the same has been settled by a Court of Justice or by the parties in writing, nor any other claim which a putnidar may have against the zemindar, shall bar or render void or voidable a sale under the Putni-law.

The converse of the last mentioned provision might also be enacted, precluding a zemindar from demanding in an application for summary sale any enhanced rent, notwithstanding that he may be legally entitled to such rent, unless the amount of it has been decided by a Court of competent jurisdiction, or admitted by the putnidar by a duly stamped document executed by him in favour of the zemindar.

No. 126, dated 14th January, 1885.

From—C. A. WILKINS, Esq., Offg. Registrar, High Court, Calcutta,

To—The Secretary to the Government of India, Legislative Department.

In continuation of Mr. Bayley's letter No. 2943, dated 20th November 1884, I am directed to forward, for the information of His Excellency the Governor General in Council, the accompanying copy of a minute by the Honourable Mr. Justice O'Kinealy on the Bengal Tenancy Bill.

Minute by the Hon'ble, J. O'KINEALY.

1. BEFORE discussing the merits of the present Bill, which has been forwarded for the opinion of the Judges of the High Court, I shall give a summary of the relations which, under the Permanent Settlement and subsequent Regulations and under the rulings of the courts, existed between the zemindars and ryots up to and after the passing of Act X of 1859. It is only through such an examination of the law that we can arrive at a due appreciation of the duty imposed on the civil courts of Bengal by Regulation VII of 1799, namely, the duty of determining the rights of every description of landlord and tenant, whether the same be ascertainable by written engagements or defined by the laws or regulations or depend upon general or local immemorial usage.

2. In legislating, according to the customs of this country, one of the chief difficulties to be contended with is the erroneous ideas of the cultivators' rights which follow from paying too much regard to the relative rights of landlords and tenants in England. Forgetting that the system of land tenures in England is peculiar to that country, some seem to imagine that in India also a zemindar must hold of the Crown and that all other rights in the soil must be carved out his tenure. There could, however, be no greater mistake than this.

3. The rights of the people of India in the soil must be determined by the laws and customs of India and not of England, and for the only authoritative declaration of what those laws and customs were, we must refer to the laws themselves. What then was the law and custom in India regarding the right of the Government in the soil? The answer to this question is to be found in Regulation XLIV of 1793 and XLI of 1795, where it is declared that—

"By the ancient law of the country, the ruling power is entitled to a certain proportion of the produce of every beegah of land (demandable in money or kind, according to local custom) unless it transfers its rights thereto for a term or in perpetuity, or limits the public demand upon the whole lands belonging to an individual, leaving him to appropriate the difference between the value of such proportion of the produce and the sum payable to the public whilst he continues to discharge the latter."

4. This is a statement of the law as it existed up to 1793. Under it Government, it will be observed, claimed no *estate* in the land. Its rights were limited to the receipt of a land tax. If then by the ancient law of the country the right of the State was so limited, the question occurs, was the soil the property of the zemindars or of the ryots? The answer to this question as far as concerns the zemindars is found in Regulation II of 1793, in which it is declared that—

"*The property in the soil was never before formally declared to be vested in the landholders.* Nor were they allowed to transfer such rights as they did possess or raise money upon the

credit of their tenures without the previous sanction of Government. With respect to the public demand upon such estate, it was liable to annual or frequent variation at the discretion of Government. The amount of it was fixed upon an estimate formed by the public officers of the aggregate of the rents payable by the ryots and tenants for each beegah of land in cultivation, of which, after deducting the expenses of cultivation, ten-elevenths were usually considered as the right of the public, and the remainder the share of the landholder. Refusal to pay the sum required of him was followed by his removal from the management of his lands, and the public dues were either let in farm or collected by an officer of Government.

5. This passage is conclusive on the point that the soil was not the property of the zemindars. The zemindar had an interest in the soil just as the State had. He had a profit issuing from the land which however he could neither sell nor mortgage. An estate in the soil out of which the ryot's interest was carved he certainly had not. Consequently the ryot's interests are in no way dependent under the common law of India on those of the zemindar.

6. If, then, neither Government nor zemindar had an *estate*, in the English sense of that term, in the land, the only conclusion is that if such an estate existed at all under the customary law of Bengal, it belonged to the third party interested, namely the ryots. They did not hold from or under the zemindar, and what rights they possessed they held by law—the custom of the country. To show what those rights were, I gave three examples referring to Northern, Western, and Eastern Bengal.

7. In 1793 Behar was settled by Mr. A. Seton, who wrote an interesting report, describing the nature of the ryots' holdings in that district. Among other things he said :—

"It is also understood that a ryot has a *sort of prescriptive right* to continue on the ground thus occupied by him while he adheres to the rates expressed in the village pottahs; inasmuch as I do not recollect an instance of a zemindar having attempted to remove a ryot who had not been guilty of a *breach thereof*."

8. At page 529 of the Fifth report, it is stated in regard to Midnapore :—

"The poorest ryots are tenants, and by the custom of the country they are considered as a *sort of proprietors*, entitled to a perpetual lease.

9. Lastly in the Selections from the Bengal Government, No. 11, the tenures of Assam in 1839 are thus described :—

"The ryots are now considered to have *full proprietary* rights in all their lands of all description * * * * I consider all the estates in Assam, of all description and sizes, to be *freehold*, and held subject to the only condition of paying the Government tax on the land; and all occupants are, with little exception, freeholders."

10. I will only give another reference. In 1851, a memorial was addressed to the Legislative Department by Sumbhunath Pundit, subsequently a Judge of the High Court, Unnodaprasad Banerjee, now Government Pleader of the High Court, Hurrish Chunder Mookherji, Secretary to the British Indian Association, and others. It will not be denied that these gentlemen were conversant with the rights of the ryots, nor asserted that they were biassed in their favour. They said :—

"*It has, we believe, not yet been denied that the interest of a khoodkasht ryot is transmissible by sale, gift, and succession, and that his right of occupancy does not terminate by any of those acts or omissions which determine the rights of leaseholders generally. In certain points of view, a khoodkasht tenancy constitutes the highest title* to real property known to the laws of this country."

11. In the opinion expressed in this extract I concur; and the remarks I have already made support it. They go to shew that the rights of the ryot did not flow from the zemindar, nor were they carved out of his estate. On the contrary, the interests of the ryot were antagonistic to those of the zemindar; the rights of both depended, in their nature and extent, on the customary law of the country, but while the right of the zemindar was a share in the profits, the right of the ryot extended to the land.

Such being the relative position of zemindar and ryot under the common law of the country, the question is how far the position was affected by the Statute Law. For the solution of this question I turn to the Regulations as the chief source of information. They limited freedom of contract, and invalidated all custom opposed to them. Let us then see what rights under those Regulations were granted to the zemindars and what limitations were thereby imposed upon them. Section 54 of the Permanent Settlement (Regulation VIII of 1793) is as follows :—

"The imposition upon the ryots, under the denomination of abwab, *mokhole*, and other appellations, from their number and uncertainty, having become intricate to adjust, and a

source of oppression to the ryots, all proprietors of land and dependent talukdars shall revise the same in concert with the ryots, and consolidate the whole with the assul into one specific sum. In large zemindaries or estates the proprietors are to commence this simplification of the rents of their ryots in the pergunnahs where the impositions are most numerous, and to proceed in it gradually till completed, but so that it be effected for the whole of their lands by the end of the Bengal year 1198 in the Bengal districts, and of the Fusli and Willaity year 1198 in the Behar and Orissa districts, these being the periods fixed for the delivery of pottahs, as hereafter specified."

Section 55 enacted that :—

"No actual proprietor shall impose any new abwab or mahtote on the ryots on any pretence whatever."

12. Sections 56 and 57 describe the variations which the form of the pottah may assume, and section 58 enacted that :—

"Every zemindar, independent talookdar, or other actual proprietor of land, and every dependent talookdar, shall prepare the form of a pottah or pottahs conformably to the rules above described, and adapted to the circumstances of his estate or talook; and after obtaining the Collector's approbation of it (which approbation shall be signified by such officer superscribing the form with his name and official appellation) he is to register a copy of the form or forms in the Dewany Adawlat of the zillah, and to deposit a copy in each of the principal cutcheries in his estate or talook. Every ryot shall be entitled to receive corresponding pottahs on application and no pottahs of any other form shall be hereafter held valid."

And section 65 enacted that :—

"No proprietor or dependent talookdar shall contract any engagement with any underfarmer or authorise any act contrary to the meaning or spirit of the regulations."

13. From this it is clear that no zemindar had power to compel his ryots to enter into any contract which had not been approved of by the revenue officers of Government. These officers were invested with the widest powers of control, and were empowered not only to decide whether any given form of lease was contrary to the Regulations, but also whether it was suitable to the particular zemindar's estate. If the lease offended in either respect, it was void. Freedom of contract in the sense that a landlord had the power to impose any restrictions he desired on his ryots without the sanction of the executive officers, or as it is now called "power to let his property as he liked," was entirely unknown. The conception was wholly foreign to the Permanent Settlement Regulations.

14. So much in regard to covenants in leases. Now let us see what rules prevailed, as to their duration and as to the rents secured by them. The former point may be briefly dismissed by the statement that under section 2 of Regulation XLIV of 1793, zemindars were not entitled to issue pottahs, even when sanctioned by the revenue authorities, for a term exceeding ten years. The latter point, that regarding rent, will be made clear by a reference to section 6 of Regulation IV of 1794, which laid down rules for determining the rates of the pottahs granted under the Permanent Settlement Regulation. The section is as follows :—

"The approbation of the Collector required to be obtained to pottahs by section 58 Regulation VIII of 1793, is to be considered to extend to the form only. If a dispute shall arise between the ryots and the persons from whom they may be entitled to demand pottahs, regarding the rates of the pottahs (whether the rent be payable in money or kind), it shall be determined in the Dewany Adawlut of the zillah in which the lands may be situated, according to the rates established in the pergunnah for lands of the same description and quality as those respecting which the dispute may arise."

And in section 7 it is stated that the rules in section 6 not only apply to those pottahs which the tenants were entitled to obtain under the Regulation of 1793, but also to the pottahs which they were entitled to receive after the expiration of the first ten years. It runs as follows :—

"The rules in the preceding section are to be considered applicable not only to the pottahs which the ryots are entitled to demand in the first instance under Regulation VIII of 1793, but also to the renewal of pottahs which may expire or become cancelled under Regulation XLIV of 1793. And to remove all doubts regarding the rates at which the ryots shall be entitled to have such pottahs renewed, it is declared that no proprietor or farmer of land, or any other person, shall require ryots whose pottahs may expire, or become cancelled under the last-mentioned Regulation, to take out new pottahs at higher rates than the established rates of the pergunnah for lands of the same quality and description, but that ryots shall be entitled to have such pottahs renewed at the established rates upon making application for that purpose to the person by whom their pottahs are to be granted, in the same manner as they are entitled to demand pottahs in the first instance by Regulation VIII of 1793."

15. Therefore the relative positions of the zemindar and the ryot were as follows:—The zemindar was bound to respect an existing arrangement, but if he found a resident ryot holding at less than the established rates, he could, under section 60 of the Permanent Settlement Regulation, cancel his pottah and assess him at the pergunnah rates, but could not dispossess him as long as he agreed to hold. Further, the zemindar was restricted from forcing on the ryot any lease unless it had been previously approved of by the Revenue officers of Government, and even then for no longer term than ten years. Furthermore the ryot had power to demand a perpetual renewal at the expiration of each term at the pergunnah rate of rent. In other words, the rate at which the zemindar could demand rent from his ryots, of whatever denomination they might be, was simply the established rate of the pergunnah for lands of the same quality and description, the imposition of any cesses being at the same time strictly prohibited.

16. Such was the position given to ryots in Bengal under the Permanent Settlement, a right to hold at the customary rates for ever. What is his position now? The answer to this question is to be found in the forms of kabulyats referred to by Sir Steuart Bayley and Mr. Ilbert in their speeches on the introduction of the Bill, The answer is that the cultivator has no right to occupy the land or is rapidly contracting himself out of his right; that he cannot claim to hold or renew at the customary rates, which no longer exist, but at the amount demanded by the zemindar; that in many cases he pays the taxes imposed by Government on the zemindar, although this is by law expressly declared to be illegal, and in some he is clogged by arbitrary restrictions of the most childish nature.

17. I have seen it urged as a reason against the necessity of the proposed law that the zemindars are merely acting within their rights. No doubt this is to a certain extent true except in the matter of the exaction of taxes or cesses. The action of the courts, and occasionally of the Legislature, since 1793 has had the effect of obscuring, if not of abrogating the ancient rights of the ryots; but it affords no answer to the claim, enforced as it is by lamentable experience, that the law should be changed so as to prevent ignorant cultivators from giving up their rights under pressure and placing themselves wholly in the power of an unjust zemindar.

18. Again it has been urged that the leases referred to in Select Committee were isolated examples, and that the exaction of oppressive engagements has not yet grown into a general custom. Granting this, it would to my mind form no sufficient answer, for what may be done by one bad landlord may be done by another. As a matter of fact, however, the assertion is not true. Some time ago I made a collection of leases in force in different districts, and as a rule they contain oppressive restrictions. I give some examples from districts representative of all degrees of advancement or backwardness in Bengal. The following is from Burdwan:—

"Should you fail to pay according to the specified instalments, you shall be liable to pay interest at the rate of half anna per rupee per month (37½ per cent.). No objections as to too much drought or rain will be entertained, nor the objection that the land was left fallow or that you have incurred loss therefrom will be considered. If you fail to pay rent according to the specified instalments, the said land shall be let to other tenants. *Further, in future if there be any new cesses, you shall be liable to pay the same.*"

The next is from Jessore:—

"You will make no objection on account of dearth or inundation; you will keep up the boundaries, and *yourselves prepare dams and embankments.* On default the arrears will be recovered with interest at ½ anna per rupee a month and costs of suit. You shall pay in addition to the fixed jumma the present *road and public works cess* and *whatever cess may hereafter be levied.*"

The following is from Bogra:—

"If you default in payment you shall pay interest on the amount of the arrear at the *rate of ½ anna* per rupee per month from default till the date of realization. If you default twice in succession *we shall of our own authority eject you* and recover the arrears of rent and hajut with interest as above and costs, * * * *and neither you nor your heirs shall object, or prefer any claim to possession* of the jote. * * * . You shall not cut down or sell trees of any sort without written authority. If you do so or allow others *you shall pay without objection ten times the value of each tree, and if you object* the amount shall be recovered with costs. * * * *You shall pay in addition to your rent all cesses that may be imposed by Government.* Neither you nor your heirs shall, during the period the jote remains in your possession, claim abatement of the gross rental or the rate assessed. *On the determination of the term* you shall *withdraw from the jote* * * *. If any new tenant, intending to settle in the village of Amjhoopee wishes to take certain plots occupied by you, you*

shall give up the same without objection. If you do not, any loss ensued to us we shall recover the amount by suit with interest and as above and you shall not object."

I shall finish by giving the conditions exacted in Mymensingh :—

"I shall take a new settlement at the end of this term; if not, I shall have no concern with the land. *Whatever rent shall be settled* after survey and assessment I shall agree to pay. If I fail to pay any instalment, I shall pay interest at the rate of 1 anna per month to date of realization. I shall not cut down any tree or allow any other person to do so. *I shall pay separately and without excuse whatever road cess, public works cess, and any other taxes or expenses which I shall be asked to pay by Government or yourself.* If I lease the house and land and remove to any other place, or if I farm, mortgage, sell, make a gift, or alienate it in any way or any portion of it, you shall be competent by order to take possession, and having dispossessed (the new-comer), settle the land with others. *After such settlement my heirs shall have no right or concern with the house or land.* Any claim or objection advanced by my heirs to a right of occupancy shall not be accepted."

19. I continue my examination of the Regulation law. The first Regulation passed in this century which exercised an important effect on the regulation of landlord and tenant was Regulation V of 1812. Section 3 of that Regulation repealed such portions of Regulation VIII of 1793 as required that the proprietors of land should prepare forms of pottahs, and that such forms should be revised by the Collectors, and that engagements for rent contracted in any other mode than that prescribed by the Regulations in question should be deemed invalid. It also empowered zemindars to grant leases to talookdars, under-farmers, and ryots in such form as the contracting parties might deem most convenient and most conducive to their respective interests; provided, however, that they (the zemindars) shall have no power to impose arbitrary or indefinite cesses, whether under the denomination of abwab, muthote, or any other denomination. The meaning of this section was apparently doubtful, but any doubt which might have arisen was cleared away by section 2 of Regulation XVIII of 1812. This Regulation introduced a new ground of enhancement of the ryot's rent. Section 6 of Regulation V of 1812 declared that where the established rates existed, those only could be obtained by the zemindar; but section 7 laid down a different principle for cases where no pergunnah rates existed, and ran as follows :—

"In cases in which no established rates of the pergunnah or local division of the country may be known, pottahs shall be granted, and the collections made according to the rate payable for land of a similar description in the places adjacent; but if the leases and pottahs of the tenants of an estate generally, which may consist of an entire village or other local division, be liable to be cancelled under the rules above noticed, new pottahs shall be granted and the collections made at rates not exceeding the highest rate paid for the same land in any one year within the period of the three last years antecedent to the period at which the leases may be cancelled."

Section 10 referred to notices to enhance the rents of the cultivators and enacted as follows :—

"Unless such notification be duly served, no greater rent shall be exigible by process of distress or confinement of person, nor recoverable by suit in court, than the cultivator or tenant was bound to pay under his previous engagements; and if more be levied from him, he shall be entitled to a refund of the excess with damages, on proof of the circumstances before a court of justice."

20. The effect of this Regulation on the scheme of the Permanent Settlement is given in construction No. 234 of the Sudder Dewany Adawlut issued in answer to a letter from the Judge of Rungpore in 1816. The letter ran as follows :—

Paragraph 4.—"The number of summary suits instituted annually since the year 1810 is exhibited in the margin. The increase is to be attributed to the operation of Regulation V of 1812, which seems to have been understood by the farmers and zemindars as authorizing them to consider the ryots, on the expiration of their leases, as tenants-at-will, and has consequently led them to demand enhanced rents in most parts of the district. The provisions of section 15 have also induced many who had demands against their tenants on old engagements to substitute summary prosecutions for the former mode of distraint.

Paragraph 5.—"By far the greater number of summary suits preferred last year were for arrears of rent due on kabuliats, but many of those that have lately been instituted are consequent to the more general operation of section 10, Regulation V of 1812, and are preferred either by the ryots after releasing their property from distraint, or by the farmers or zemindars to recover increased rents on the grounds of having served their tenants with the notice described in the above section and Regulation, the general principles of which, although it is professedly enacted for the guidance of persons purchasing lands sold for arrears of revenue, appear to be applicable to all cases where no written engagements exist, as the respective rights of the proprietors and the ryots, considered independently of their mutual agreements, cannot be supposed to be altered by the mere circumstance of the sale of the estate.

Paragraph 6.—"On first view of section 10, Regulation V of 1812, it might be inferred that the zemindars or their representatives possess the power of exacting, in the first instance, by distraint or by a summary process, whatever amount they may have thought proper to insert in the notification required to be conveyed to their tenant, the latter having only the option of resigning his land, or continuing to hold it subject to paying the enhanced rent, until he can prove the injustice of the demand by a regular suit. Such an interpretation, however, does not seem to be easily reconcilable with that part of section 7, Regulation IV of 1794, which, being declaratory of the rates at which the ryots were entitled to demand pottahs, and, of course, to continue in possession of their lands, cannot be considered as abrogated by section 3, Regulation V of 1812, and I have hitherto deemed it necessary to require zemindars and farmers, prosecuting summarily for enhanced rent, or defending suits instituted against them under section 15, Regulation V of 1812, to show that the amount demanded in the notification served on their tenants was conformable to the pergunnah rates and the actual extent of land.

Paragraph 7.—"Should this construction of the Regulation be correct (and I beg the favour of your informing, should the Court consider it otherwise), it is evident that in the generality of suits denominated summary, it will not be necessary to adduce evidence to prove the pergunnah rates, the quality of the cultivator's land, and frequently the quantity thereof, all of these points being usually disputed, and even the last very frequently remaining doubtful until actually measured, in consequence of the fraudulent reduction made by the zemindars before the decennial settlement in the nominal extent of every farm or jote on their estates for the purpose of imposing upon Government and obtaining their lands in perpetuity on favourable terms."

The answer of the Court was as follows:—

"The Court entirely concur in the construction of section 10, Regulation V of 1812, stated in the 6th paragraph of Mr. Scott's letter dated the 28th July 1815, and resolve that he be informed accordingly. The Court observe that the written notice required by section 9 of that Regulation, when no written engagement may have been entered into, expressly refers to tenants subject to an enhancement of rent under subsisting Regulations, including, of course, the unrepealed provisions in section 7, Regulation IV of 1794, relative to the renewal of pottahs at the established rates of the pergunnah."

21. Thus it is clear that after Regulation V of 1812 was passed, every ryot was entitled to demand from his landlord a pottah at the established rates of the pergunnah, if they existed, and to obtain a renewal of it on the expiration of the term. But where there were no pergunnah rates, the ryot was liable to pay the same rate as was paid for lands of a similar description in the places adjacent. I think there was no point on which the members of the Rent Commission came so nearly to the same opinion as on the right to hold at the customary rates. I held the opinion strongly. Mr. Field and Mr. Mackenzie agreed in asserting—

(1) That the authors of Act X of 1859 did not intend to effect any radical change in the rights and status of the cultivating classes.

(2) That according to law, up to 1859, the only class of ryots recognised as entitled to hold at specially privileged rates were those ryots whose rates were fixed for ever.

(3) That on a correct interpretation of the Regulations and Acts before Act X of 1859 no landlord was *legally* entitled to raise the rents of any village ryots above the pergunnah or customary *siriṭ* or rate.

Baboo Peary Mohun Mukerji said:—

"On no one point are the early Regulations more explicit than on this, that with the exception of certain privileged ryots the general body of ryots were liable to pay rent at the established rate, which was understood to mean fully as much as they could afford to pay."

I adhere to the opinion, an opinion in which we all concurred, that a zemindar could not *legally* demand more than the pergunnah money rates. But the law was not powerful enough to defend the ryots, while the zemindars succeeded in breaking the rates and in obtaining from their ryots what they had no legal right to demand.

22. In regard to talukdars the rule was somewhat different, and they were liable to assessment under section 51 of Regulation VIII of 1793, which had no application to ryots.—(See *Ram Chunder Dutt* vs. *Jugesh Chunder*, 12 B. L. R., p. 229). This section was soon found defective. In the case of *Bunchanund* vs. *Hurgopal Bhadoory*, 1 Sel. Rep., p. 192, decided in the year, a talookdar was sued for arrears of rent at an enhanced rate. There was no doubt that his tenure was liable to enhancement, but the difficulty was to determine the proper rate. The decision was as follows:—

"The court entertained no doubt of the lands being held by the respondent at a variable rent, or of their being that description of tenures on which the zemindar is entitled to

demand an increase of rent in proportion to the ascertained assets; and as there did not appear to be in the pergunnah any settled rates of rent for similar tenures, according to which the proper rent could be adjusted, it was determined that the rent demandable from the respondents should be settled by an actual survey and assessment, to be made at the expense of the appellant, unless the parties should come to an adjustment between themselves. In the event of no adjustment being made by them, it was directed that the Zilla Judge should cause a measurement of the lands, and estimate their produce, and after deducting 10 per cent. as the customary rate of the talukdars, together with the actual charges of collection, should fix the residue as the annual rent by the appellant for future years, as well as the rate at which the arrears of the period specified in the claim of the appellant should be adjusted."

23. The reason of this decision is best given in a note by the Judges, in which they say: "There being no rule expressly applicable to the adjustment of rent in this case, the decision was passed upon an equitable consideration of the right of the zemindar to receive a variable rent, proportionate to the produce of the lands which formed a constituent part of his zemindari, and of the right of the talookdars, as holders of hereditary though subordinate tenure, to participate in the RENT produce of the lands comprising it."

This is the first case I can find decided on equitable principles, and it formed the basis of section 8, Regulation V of 1812, which gave a new legal ground for enhancing talukdars. This ran as follows:—

"In case of a dependent talookdar, if the rents of the lands be compared according to the rates payable by ryots or cultivators for land of a similar quality and description, a deduction shall be allowed from the *gross rents* in the adjustment of the jumma of such dependent *talook* at the rate of ten per cent. of the talookdar's profits, or income, over and above reasonable allowance for charges of collection according to the extent of the talook."

Neither the decision nor the Regulation referred to the value of produce of the land in the ordinary sense. They only referred to what the Judges call the "rent produce." It will futhermore be observed that neither the Regulation nor the decision based on it has any bearing on the law of enhancement applicable to ryots. That law provided that ryots' rents should be limited by the perganah or customary rates, while talukdars were liable to pay the full mofussil collections less the customary deductions. It is essential that this distinction should not be lost sight of. To confuse rules of enhancement relating only to talukdari tenures with rules which are applicable to ryoti rents is to do the ryots' interests a grave injury.

24. The next law affecting the Permanent Settlement Regulation was Regulation VIII of 1819, and the effect of this Regulation was considered in Construction 1205 of the Constructions of the Sudder Dewany Adawlut of the North-Western Provinces, which was confirmed by the Calcutta High Court on the 12th of April 1839. In that Construction the Sudder Dewany Adawlut of the North-Western Provinces held as follows:—

"They (that is the Court) remark that under the provisions of clauses 4 and 5, section 18, Regulation VIII of 1819, the landholder must first establish by a suit, either summary or regular, the existence of an arrear before he is at liberty to cancel the lease of an under-tenant; while as regards khoodkhast ryots, they have also the power of immediately paying into court any sum adjudged to be due from them before they can be ejected."

The importance of this decision on the *status* of the non-occupancy ryot before Act X of 1859 will be at once perceived. Its importance lies in the fact that such a ryot could only be ejected for non-payment of rent. As far as I understand, the Bengal Government, in its recent report on the Tenancy Bill, is therefore well within the mark, as far as the law before 1859 stood, when they claim that restrictions shall be put on a landlord's power of capriciously ejecting a non-occupancy ryot. And this view of the law is enforced by abundant evidence of a later date. In the first place it is confirmed by a case decided in 1845 in which the nature of the tenure of a ryot in Bengal was discussed before three Judges of the Supreme Court, namely, Peel, C.J., Grant, and Seton, JJ. Their decision was as follows:—

"On the first ground the plaintiff must be non-suited. The ryot here has a better tenure than a lessee in England, and one not nearly so precarious as that of a tenant-at-will."

25. This decision was followed by a decision of a Full Bench of the Sudder Dewany Adawlut in 1855. In that case the question was, what was the nature of a ryot's tenure in Bengal? The Judges say:—

"The plaintiff has not shown that his vendor, whose rights only he bought, was a holder of one of the tenures excepted in the five clauses of section 26, Act I of 1845, nor does he prove in what particular class of ryots he is included. We therefore consider the plaintiff's claim to possession, without permission of the zemindar, invalid. He bought, as he thought, something: the principle *caveat emptor* strictly applies, and it was for him to look to the

tainty of getting a consideration for his purchase-money. The party whom he succeeded no equivalent to offer: he had merely a right of occupancy so long as he paid his rents; ling to do so, either from inability or from unwillingness, the possession returned to the prietor, the contract between him and his ryot being no longer in force. Such is e custom of the country, and none but the tenures referred to in Act I of 1845, or in case here a *bonus* has been given, thereby creating in the ryot a right in the property to that extent, are considered tenures transferable by the ryot."

What the court here decided was that, according to the Regulations and custom of the country, an ordinary ryot had a right of occupancy so long as he paid his rent, although he was not within any of the privileged classes of ryots described in section 26, Act I of 1845.

26. It seems, therefore, according to the Regulations and according to the decisions both of the Supreme Court and the Sudder Dewany Adawlut, that up to 1859 ryots had a right to retain possession of their land so long as they paid the customary rate of rent and were not liable to ejectment on a notice to quit. This view of the matter is strengthened by the forms of ejectment prescribed by the Regulations. In May 1828 the Calcutta Sudder Dewany Adawlut, in Construction 482 of the Sudder Constructions, laid down as follows:—

"The Court are of opinion that all differences between landholders and their tenants or ryots involving the question whether the landholder can legally oust the tenant or ryots from the lands which the latter considers himself entitled to occupy should come under the provisions of Regulation XLIX of 1793 or Regulation VIII of 1819."

And in 1839 the same court, as I have pointed out above, held that before a landholder was entitled under the Regulation VIII of 1819 to oust his ryot, he was bound to prove the existence of arrears of rent. Regulation XLIX of 1793 only referred to possessory actions. It was subsequently repealed by Act IV of 1840, and is now embodied in the provisions of the Criminal Procedure Code, and the possessory action given in the Specific Relief Act.

This would appear exhaustive. If all actions for ejectment were to fall under one or other of two Regulations, and neither of these Regulations give any colour to the idea that an ordinary ryot could be ejected on notice, while he paid rent, the only conclusion is that no such action would lie; and as a matter of fact, although two editions of Mr. Marshman's digests of the civil law in Bengal were authoritatively recognised as text-books in the Lower Provinces up to the year 1859, no trace of any such action can be found in them.

27. In 1850 the question of enacting or re-enacting in one law the old Regulations in regard to ejectment was pressed upon the Supreme Government. What then were the Regulations under which it was declared that a tenant could be ejected? They are set forth in the preamble to the Bill, which runs as follows:—

"Whereas by clauses 6 and 7, section XV, Regulation VII of 1799, clauses 2 and 4, section XVIII, Regulation VIII of 1819, of the Bengal Code, and section 26, Act I of 1845, rights are given in certain cases to attach under-tenures, to cancel leases, and to eject under-tenants or occupiers of lands whose titles have ceased, but no means are provided by which persons claiming to exercise those rights can obtain the assistance of the Civil Courts for that purpose, except upon a decree obtained in a regular suit; and whereas in like manner no means, except a regular suit, are now provided by law for giving the assistance of the Civil Courts to persons claiming to eject tenants after the determination of their tenancies, or to eject agents after the determination of their agencies; and whereas the enforcement of such rights without the assistance of the Civil Courts is likely to cause affrays and breaches of the peace, and it is expedient to provide a more summary mode for the trial of such rights, it is enacted as follows," &c.

28. Thus so far back then as 1850, admittedly the only rights which zemindars, even if auction-purchasers, had to eject under-tenants or occupiers of land were those given by clauses 6 and 7, section XV, Regulation VII of 1799, clauses 2 and 4, section 18, Regulation VIII of 1819, and section 26 of Act I of 1845. Under Regulation VIII of 1819, as I have already pointed out, the zemindar could not eject any tenant unless there were arrears of rent due. Section 26 of Act I of 1845 referred to the rights not of an ordinary zemindar but of an auction-purchaser, which were of a special nature in order to protect Government. Clauses 6 and 7, section 15, Regulation VII of 1799, referred to cases in which a zemindar instituted summary suits for arrears of rent, or where the tenant defaulted in payment.

29. This Bill was circulated and printed in the *Calcutta Gazette* of 1852, and though it was ultimately abandoned, it shows most distinctly that at that time an ordinary proprietor of land in Bengal could only

determine the tenancy of an under-tenant or cultivator when arrears were due.

When the Bill which afterwards became Act X of 1859 was drafted, the substantive part of the law of ejectment was inserted in clause 5, section 17, and section 19 of the draft Bill. Clause 5 ran as follows :—

"All suits to reject any ryot or cultivator, or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the condition of any contract by which a ryot or cultivator may be liable to ejectment, or a lease may be liable to be cancelled."

Section 19 said—

"If any zamindar or other person in receipt of the rent of land requires assistance to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorised by any Regulation or Act, he shall make application to the Collector, and the Collector shall proceed thereupon to enquire into the case and pass orders in the manner provided for suits under this Act. Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received if the lease be of the kind denominated ticca zur-i-peshgee or the like, in which an advance has been made by the lease-holder, and the proprietor's right of re-entry at the end of the term is contingent on the repayment of such advance either in money or by the usufruct of the land. In all such cases the parties must proceed by suit in the Civil Court."

30. These sections formed part of Act X of 1859. They give no new powers to eject, and left the landlord in the position he held under the Regulations. But the effect of these sections reproducing the substance of the Regulation Law was perverted by an oversight in the drafting of Act X of 1859, namely the failure to distinguish between ordinary zemindars who could only eject for arrears of rent, and those who purchased at auction sales for arrears of revenue who had wider powers of ejectment. The preamble of the Bill in 1850 had carefully set forth the different regulations empowering zemindars to eject, and carefully distinguished between the smaller powers of an ordinary zemindar and the larger powers of an auction-purchaser. The draftsmen of Act X of 1859 struck out the mention of the Regulations and left the rest of the section as it stood in 1850. On the passing of the Act, the Regulations were repealed and soon forgotten. The amalgamation of the Supreme Court and the Sudder Dewany Adawlut assisted the tendency to bring in the theories of English law. During this decay of local knowledge and spread of notions based on English property law, this section still remained; a section evidently recognising the ejectment of a ryot by some class of zemindars, but not stating the class. What wonder is it that lawyers of the Supreme Court, not conversant with the history of Bengal, should follow the analogy of English law and declare that not merely an auction-purchaser, but every zemindar could eject when in any case he desired to get rid of his tenant.

31. When the Bill of 1850 was circulated, Mr. C. Steer, the then Judge of Hooghly, but afterwards a Judge of the High Court, proposed that a ryot should be allowed to relinquish his holding by notice—a power which up to that time had never been afforded to tenants. In his letter dated the 26th November 1851 he said—

"*Para. 7.*—There is no disputing that the ryots are horridly oppressed; to what degree is only known in its full extent to their tyrants. At present ryots are quite at the mercy of their zemindars. There is no legal means open to them of getting quit of any bad lands they may have acquired. The remedy the Court propose is not enough. It will be no benefit to the ryot to register his resignation if it is left in doubt what effect such registration has, nor will a clear opinion alone on this point be of any service to him, unless other measures are also taken to secure to him the advantages which registration is designed to afford. Nothing less than shutting up the door to endless and vexatious lawsuits under that frequently availed source, the summary regulation, and allowing the ryot to depart from his relinquished lands and tenements with his property safe in his possession, can be regarded an adequate measure for the relief of a ryot suffering under the evils of a taxation he can neither bear or escape from.

"*Para. 8.*—I repeat that nothing but placing the ryot completely out of reach of the zemindar's touch, and declaring him liable only to a regular suit for any claim posterior to the registration of his resignation will render him safe from the prosecutions of his zemindar. If he is not allowed the protection of the police to remove his property, and if summary actions and attachments are not barred, his resignation tendered to the Court will profit him

nothing. His property will be seized, be the act sheer plunder, or under colour of attachment, and the ryot will find it impossible to get it back. If he should complain to the Magistrate, the zemindar will plead an attachment. If he should appear before the Collector and seek the release of his property from an unjust attachment, the zemindar will reply that there has been no attachment at all. So that if left without aid to remove his property, he will leave his old habitation a beggar without a piee to support himself or his starving family, and without a bullock or plough or any other means to cultivate any new farm. Thus he is in a state of thraldom to his zemindar, worse than slavery. The only remedy for these things is to declare summary suits and attachments on account of any tenure barred after the resignation of it is filed. No mischief or injury can accrue to the zemindar by the prohibition of summary suit or attachment, as a regular suit is just as effectual to enable him to recover his dues as the honest application of the summary laws and attachment can be; but the evil lies in these enactments being always abused on every occasion when it serves the purpose of the zemindar. They give him a handle to seize a poor fellow's property, and its recovery is about as probable as if it had fallen into the hands of dacoits.

"*Para. 9.*—There is no occasion I feel satisfied when so much oppression is practised as when a ryot is known to be meditating the relinquishment of his jote. As the law now stands, he has two alternatives, to remain and bear as best he can a grinding taxation, or to fly a beggar and a vagabond. Such a state of things ought not to be tolerated by a just and benevolent Government; and is it going beyond the point to a attribute to it a great deal of one species of crime which prevails all over these provinces, without which the overtaxed poor would find it impossible to feed themselves and to feed their rapacious landlords. To enable him to do both dishonest mensurement will be resorted to, and the power which enables a zemindar to exercise such a tyranny over his tenants, is therefore a fruitful source of much of the crime which now exists."

32. On account of this and other representations a section was introduced into the Bill which subsequently became Act X of 1859. That section ran as follows:—

"Any ryot or cultivator who desires to relinquish the lands held or cultivated by him shall be at liberty to do so, provided he gives notice of his intention in writing to the persons entitled to the rent of the lands in or before the month of Jeyt of the Bengal year in which, or of the Fusly year preceding which, the relinquishment is to have effect. If he fail to give such notice, and the lands are not let to any other person, he shall continue liable for the rent of the lands. If the person entitled to the rent of the land refuse to receive any such notice, and to sign a receipt for the same, it shall be served upon him by the Collector, on application for such service being made by the ryot or cultivator within the time above mentioned."

No section giving the zemindar a corresponding power to terminate a tenancy by notice was entered in the Bill or ever made law, and this strongly corroborates the position I have explained in the preceding remarks, namely that, except on a few doubtless important points, Act X of 1859 did not really change the old regulations.

33. The British Indian Association in their comments on the Bill noticed the section just quoted and entered a strong protest against it. In section 21 of their letter to the Government of India, dated the 14th February 1859, they wrote as follows:—

"When the ryot is readily invested with the rights of relinquishing his land, equity demands that the zemindar should have the privilege of ejecting his ryot, whether with or without engagement, when reason for so doing exists. Your petitioners are, however, aware of the consequences which this state of things would lead to, and they therefore recommend that no right fraught with such mischief should be conceded to one party to the prejudice of the other."

To this extract I invite special attention. It is a distinct admission by the exponent of the zemindari interest that so late as February 1859 the right to eject ryots at will was not a right claimed by zemindars at large.

34. So far therefore it appears clear that neither the framers of the Act nor the people most interested in Act X of 1859 ever contemplated that the zemindar had any right to put an end to the tenancy by notice. The British Indian Association representing the zemindars of Bengal asked that the privilege of ejectment at will might be conferred as an equivalent for the ryot's right of relinquishment, and this request was refused. It was during a later period when the preamble of Act X of 1859 had been swept away by the repealing Act, when the history of the old Regulations was forgotten, and cases were decided by officers imbued with the spirit of English law, that by degrees the theory was established that under Act X of 1859 and Act VIII (B.C.) of 1869 the zemindar could treat a tenant in Bengal as a landlord could treat a yearly tenant in England, and was

entitled to dispossess him not on a half-yearly notice, but on what was called a reasonable notice to quit.

In a previous note I said in reference to this question that—

"Whoever enquires into this last attempt of the zemindars to extend their powers of ejectment will be astonished to find how modern it is. The first recognition I can find is that given at page 548 of XXII Weekly Reporter in a case in which the judgment was delivered in 1874 by Phear and Morris, JJ."

35. I have heard it urged that whatever the position may have been under the Regulations, still as the Judges have decided under Act X of 1859 and Act VIII (B.C.) of 1869 that a ryot can be ejected with notice, it is impossible for the Legislature to return to the old state of things. This seems to me a monstrous proposition to maintain. Surely the fact that for a few years past a certain number of decisions have set up an erroneous principle seems not of such importance as to bar a return to the law of the land as declared by the Legislature and the courts for a period of upwards of sixty years. We have not to deal with the interpretation of a statute which has lasted for a century or for a long period, and there ought to be little difficulty felt by the Legislature in restoring things to the position which, under a correct construction of the law, they occupied up to 1874.

A point somewhat similar to this was brought before the House of Lords in the case of the trustees of the Clyde Navigation against Laird and Sons, in which Lord Watson in delivering his judgment said—

"I have only to add that in my opinion such usage as has in this case been termed *contemporanea expositio* is of no value whatever in construing a British statute of the year 1858. When there are ambiguous expressions in an Act passed one or two centuries ago, it may be legitimate to refer to the construction put upon these expressions throughout a long course of years by the unanimous consent of all parties interested, as evidencing what must presumably have been the intention of the Legislature at that remote period. But I feel bound to construe a recent statute according to its own terms, when these are brought into controversy, and not according to the views which interested parties may have hitherto taken and in determining the true import of such a statute it appears to me to be quite immaterial to consider whether it was passed in the year 1858 or in 1883."

36. If then, as has been declared in the House of Lords, a wrong interpretation of a statute for twenty or thirty years would have very little effect on them in deciding as to the purport of the statute, surely there can be no reason why this incorrect interpretation of Act X of 1859 should not now be set right by the Legislature and the rights of under-tenants and occupiers be correctly and carefully defined. From the time of the Permanent Settlement Government has constantly asserted a determination to legislate for the people of the country according to their ancient rights and customs. Is it to be debarred from redeeming its often-repeated pledges because of decisions manifestly wrong, which have sapped all the long-established rights of the tenants?

This then appears to me to be the policy which should be followed in any Tenancy Act, and so far as the provisions of the present Bill are in accordance with that policy I approve of them. So far as they depart from it by injuriously affecting the position of under-tenants and of the cultivating ryots I dissent from them. The aim and object of the Government should be not to create new relations between landlord and tenant, but to respect and clearly define the old, for the old are not only the best, but are what the people are morally and equitably entitled to possess. It seems to me that the recommendations of Mr. Rivers Thompson in his report of the 15th September last tend towards that end, and I consider them fair and just to both parties.

37. I pass on now to notice a few of the more salient portions of the present Bill. I see that some doubts have been raised as to whether the Secretary of State for India in Council will be bound by the Bill. I trust that if there is any doubt on this point it may be removed. At the same time I must say that I do not hold the opinion that, unless the Secretary of State is expressly named in the Act, he will not be bound by it. This view seems to me to rest altogether upon a misconception of the position of the Secretary of State in this country. He is exactly in the position of the old East India Company, and from the very beginning the Company was bound by the Regulations and Act X of 1859, though you may search in vain to find its name in them.

38. There is some danger in the attempt to define the different kinds of tenures. The circumstances of the country are so varied that it is very difficult to obtain a perfect definition; and if the definition turns out to be imperfect, serious inconveniences must of necessity ensue. This is not a new difficulty, nor can I see any reason why the present framers of the Bill could be blamed for not doing what we never have been able to do since the time of the Permanent Settlement. None of the old Regulations undertook to define the different kinds of tenures, or to distinguish them from one another, nor did Act X of 1859, nor Act VIII (B.C.) of 1869. I am strongly of opinion that after all it might be a much wiser course to leave this matter to the courts. It has been left to them since 1793 to decide what is and what is not a ryotti tenure. I think it would be as well if the power is allowed to remain with them.

39. I observe that it has been objected to section 26, sub-section 2, that a presumption in favour of an occupancy right is contrary to the spirit of the Indian law and unjust. I confess I can see nothing wrong or extraordinary in this presumption if viewed with reference to the law of property in India, but if the English standpoint is taken, namely, that a ryot has nothing but what he gets from his landlord, the conclusion would of course be different. We are not however warranted in applying English theories to the construction or interpretation of an Indian Tenancy Act. In Bengal, the tenantry have always had rights in the soil not *under*, but *adverse* to, the zemindar. The right of the Bengal ryot to his holding, while he pays a fair rent, is a right *anterior to*, not a right carved out of, that of the zemindar. This fact is, by the common law of this country, indisputable. Why, then, should it be presumed that these rights, which we know to exist, do not exist, and that the tenant holds only from year to year. It is fair to presume that they do exist until the contrary is proved. The contention adverse to this presumption becomes more unreasonable when we are told that the persons holding under a statutory title form the majority of tenants. Presumptions of a somewhat similar nature are recognised by the Regulations. By section 60 of Regulation VIII of 1793, no landlord in Bengal could demand a higher rate of rent from a resident ryot unless he proved that the ryot had held for three years under the pergunnah rates. Under section 51, Regulation VII of 1793, no zemindar could enhance the rents of a talook unless he proved that it was liable to such enhancement by the custom of the country. If this is the spirit in which the founders of the Permanent Settlement legislated, I do not think there is any objection to extending the protection of a reasonable presumption to ryots who, as a class, are much less able to protect themselves than talookdars. Surely it is not intended that when no such tenancy exists the presumption should be that all ryots hold from year to year. In the North-West it has been decided that there is no presumption that a particular tenant's holding is not transferable without the zemindar's consent (Meer Hedayat Ali *vs.* Baboo Lall Singh, 1869, page 37), and this is a much stronger presumption than that now proposed.

40. In regard to occupancy tenures I think the proposal to render them transferable in Bengal is unobjectionable. Under the law before Act X of 1859 the tenure of khudkast or kadimi ryots could be transferred without the consent of the zemindar. In addition to these there were many other holdings transferable by custom. I may note as examples the jotes of Rajshahye and the guzashta tenure of Shahabad. When Act X of 1859 became law, the highest tenure known to the law was a right of occupancy, and in course of time this became the general description covering all these more ancient tenures. It is, I think, a mistake to suppose that the custom of selling occupancy tenures has arisen since Act X of 1859. I believe that many of the tenures now sold as occupancy holdings are old tenures transferable before that Act ever came into existence. No doubt the custom has grown since 1859. It now exists in all districts of Bengal, and should, I think, be recognized and allowed with such safeguards as will prevent injury to either landlord or tenant. At present, where the custom exists, the zemindar is powerless to object to the purchaser, and may be saddled with a ryot of the worst character. The ryot, on the other hand, may sell to any one, and hence it may and will happen that he will sell his occupancy right to his money-lender and remain as a sub-tenant on the land. If such sales were limited to *bonâ fide* ryots on the one hand, and

subject to objection from the zemindar on the ground that the purchaser was not a cultivating ryot or a notoriously bad character, they would be unobjectionable. Nothing further seems necessary for the protection of the rights of either party, and I would not go beyond it. For this reason I deprecate allowing the zemindar the right of pre-emption or the right to levy a heavy fine on transfer or a wide power to object.

41. In regard to the limit of 20 per cent. proposed to be placed on enhancement, I have little to add to what I wrote in my last note. I then pointed out that 25 per cent. of the gross produce was in my opinion a rack-rent, and I added that the rent in England was not more then one-eighth of the value of the crops. I also pointed out that the Eastern Landholders Association proposed one-fifth as the highest limit of enhancement which the zemindars thought proper to demand. There is ample material to corroborate this view in the litigation which arose in Nuddea after the passing of Act X of 1859. In the celebrated case of Hills *vs.* Ishore Ghose, W. R. 1864, I find that he sued to enhance the rent of a ryot having a right of occupancy, and succeeded. There the Judges said "according to either of the calculations the rent would amount to Rs. 1-3 a beegah, without taking fractions of an anna. We think that the amount is a fair rate of rent for the *matan* lands, and that plaintiff is entitled to have the rent of the matan lands held by the defendant enhanced to one rupee a beegah. *This is less than one-sixth of the gross proceeds.*" The rent was decreed, but the amount was never realized. No tenant could or would pay it.

42. There is still another case illustrating the great danger of allowing zemindars to enhance to 20 per cent. of the gross produce. During the settlement of the Jellamootah estate a series of experiments were made with a view to determine the proportion of rent to gross produce. The following is the result in tabular form :—

Statement of produce in connection with the proposed re-settlement of the Majnamuta Estate.

	Names of Pergunnahs.	Average outturn of produce per beegah, ascertained in maunds of paddy.	Average price per maund of paddy.	Total value of the produce, including straw.	Deduct expenses of cultivation.	Deduct proposed average rate of rent.	Total deduction.	Balance left to the ryot as net profit.
1	2	3	4	5	6	7	8	9
		Mds. s. c.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
1	Majnamuta ...	8 31 4	0 12 0	7 1 4	2 8 0	1 11 0	4 3 0	2 14 4
2	Doro Dumnan ...	7 32 0	1 0 0	9 4 9	5 0 0	2 2 0	7 2 0	2 2 9
3	Narnamuta* ...	.....	.....	.....	.....	1 6 6	.....	.....
4	Kusba Hidgellee ...	9 20 0	0 12 0	7 11 0	3 6 0	1 14 0	5 4 0	2 7 0
5	Balijora ...	10 31 0	0 12 0	8 5 0	2 8 0	1 11 0	4 3 0	4 2 0
6	Sarifabad ...	8 29 0	0 12 0	7 0 9	2 8 0	1 12 5	4 4 5	2 12 4
7	Kismut Pataspore ...	8 8 8	0 12 0	6 9 0	2 8 0	1 5 6	3 13 6	2 11 6
8	„ Shipore ...	6 36 0	0 12 0	5 10 9	2 8 0	1 11 0	4 3 0	1 7 9
9	Datta Khoroi ...	9 20 0	0 12 0	7 10 0	2 8 0	1 19 6	4 1 6	3 8 6
10	Amirabad ...	8 32 0	0 12 0	6 13 0	2 8 0	1 2 3	4 4 3	2 8 9
11	Majna Nyabad ...	8 20 0	0 12 0	6 14 0	2 8 0	1 9 0	4 1 0	2 13 0

* No experiment was made in Narnamuta. The rates were fixed by comparison with those prevailing in the neighbouring pergunnahs.

From this table it appears that the proportion of rent to gross produce was 25 per cent. What was the result? Government was unable to recover the rents. A considerable permanent reduction amounting, I understand, to more than 10 per cent. in the rental was effected, while it was found necessary to remit arrears to the extent of two and a half lakhs of rupees. In the face of these results it can hardly be doubted that one-fifth of the gross produce is more than the ryots of this country can afford to pay. I have heard it stated that in certain districts the cultivators pay a higher money-rent than one-fifth of the gross produce taken in staple food crops; and where there is garden cultivation, or where crops of exceptional value are grown, this may be true. But specially valuable crops cost a great deal to grow, and a failure of the crop means the ruin of the ryot. I am no advocate of rents graduated according to

the character of the crop, nor do I think that any country can prosper where rents are regulated, not by soil quality but by its produce. Furthermore, if we are to refer to Mahomedan law, it may be observed, that while some maintained it to be allowable to take half of the produce as *kheraj*, the better opinion was that not more than a fifth should be taken. If a fifth was considered equitable in olden times, when population pressed but lightly on the soil, that proportion must be rack rent to-day. As time goes on, as population increases, and the productiveness of the soil grows less, the proportion of one-fifth will become impossible of payment. In former times there was always a difficulty in determining the amount of land held by the cultivators. Then, as now, they steadily opposed any measurement of their holdings, and I think it is the general opinion that they then cultivated and do now cultivate more land than they admit.

43. I think there is some reason to believe that the present rents are too high. This is also the opinion of a body which manages estates the rent rolls of which amount to 57 lakhs of rupees. I refer to the Board of Revenue. In the Board's report for 1883-84, there is the following paragraph :—

"This appearance of bad collections is to be explained by the system on which zemindari accounts are almost invariably kept by private proprietors. While one set of rates is entered as payable in the accounts, another rate is actually paid. The full rent which is entered in the zemindari books may be paid in the most favourable years, but as a rule a zemindar is willing to receive and be satisfied with a rental considerably below the amount of the full demand as shown on his books. The difference is debited to a *hajut* account, or it is merely shown as a balance against the ryot, or in some cases it is kept alive by instalment bonds executed by the ryot. Almost every estate under the Court of Wards comes under its management with large unrealizable balances, and it is found that even the current demand is not realizable in spite of all the exertions of the managing establishment. Year after year the percentage of collections for wards' estates is less than the current demand. The result has generally been considered unsatisfactory, but no other result can be shown without oppressing and harassing the tenantry. It is no exaggeration to say that a fair and liberal zemindar does not collect more than 75 per cent. of his nominal rent-roll on an average of years. There is good reason for believing that in some of the eastern districts the average of late years has not exceeded 60 per cent."

The Members of the Board of Revenue, who manage more property than any zemindar or agent in Bengal, consider that not more than 90 per cent. of the rental in estates coming under their management can be realized "without oppressing and harassing the tenantry," or in other words, the present rent-rolls are at least 10 per cent. too high, and cannot be realized.

44. If this be so, and I can see no reason to doubt the experience of the Board, I think the Government of India should pause before it grants to zemindars any further facilities to enhance or any summary method to realize the already excessive rents. I believe it would be far better for both zemindar and ryot if the rents were not so high. The former would not lose anything by giving up what he cannot now realize without some oppression, and he would have the sympathy of every right-minded person in enforcing his rights against such ryots as could but would not pay. It is proposed by section 41 of the Bill to allow the existing rent to be enhanced up to 25 per cent. by mutual agreement. I confess I dislike this proposal. I do not conceive that any person, looking at the nature of the agreements, of which I have already given extracts, will contend that there is any such thing as freedom of contract between landlord and tenant in Bengal. The ryot submits because he cannot help it. It is not reasonable to suppose that a cultivator in this country, who is strongly attached to his holding, would, if he could help it, agree to give up his right of occupancy in the soil, pay all the taxes which may be levied from his landlord, although this is expressly prohibited by law, and fetter himself by, to him, novel restrictions. Yet numbers of the ryots have done it. In the same way they will agree to any enhancement to pay any amount, trusting that the obligation will never be enforced, or they will by some means or other be able to avoid their liability for the increased rent. If enhancement is at all allowed out of courts, then the amount should be so small as will neither tempt the landlord to demand nor the ryot to agree to pay more than is reasonable, such as ten per cent. on the existing rent. From this point of view I consider that full justice to the zemindars is met by the proposal of the Bengal Government that enhancements out of court should not exceed 2 annas in the rupee of the former rent.

45. These objections are of minor importance in comparison to what I consider the great defect in the Bill. It gives no protection to that great mass of ryots who have not obtained a right of occupancy in the soil. Before Act X of 1859 there was hardly any distinction between resident and non-resident ryots *in Bengal*. Both paid at the customary rate; both were safe from eviction, unless for non-payment of rent. In the draft of Act X of 1859, the present rights given to occupancy tenants, were granted to all resident ryots. This limitation was consistent with the Regulations of the North-West Provinces, which recognized the distinction between resident and non-resident ryots; but was inconsistent with the Statute law of Bengal, which admitted no such distinction. This was not all. When the Bill was circulated, the Board of Revenue in the North-West said that it was a fallacy to regard every "resident ryot and cultivator" to have a right of occupancy in that province, and recommended the 12-years' rule. This was adopted by the Select Committee, who said:

"The laws in force speak of "*khoodkasht* ryots" as possessing rights of occupancy, and in some places the word *khoodkasht* seems to be considered as synonymous with "*resident*." Resident was therefore the word used in the original Bill. But it has been pointed out by the Western Board that residency is not always a condition of occupancy, and it appears after much enquiry it was prescribed by an order of the Government of the North-West Provinces in 1856 as most consistent with general practice and recognised rights that a holding of the same land for 12 years should be considered to give right of occupancy. We have followed this precedent, and altered the section accordingly."

Regulation LI of 1793.
Regulation VIII of 1819.
Section II, clause 3; section 18, clause 5.

46. It was unfortunate for the ryots of the Lower Provinces of Bengal that the law and precedents of those Provinces were not followed instead of the order of the Government of the North-West Provinces. Starting with Regulation 51 of 1793, which had no reference to Bengal, the Committee drew a distinction between resident and non-resident ryots which has never been recognised by the law in force in the Lower Provinces. This was the first mistake. The second was more serious. The North-Western Provinces is (with the exception of Benares) not permanently settled, and the Government officers from time to time when settlements are revised record what they consider the rights of the tenants. In 1856 Government decided on taking 12 years' cultivation as a test of the right of occupancy, but this could in no wise affect the rights of tenants under the Permanent Settlement in the North-West. Much less could it be said to be a guide for legislation in regard to Bengal. Unfortunately this precedent was followed, and the resident ryot, who admittedly was before Act X of 1859 protected against arbitrary enhancement, was after that Act passed liable to pay whatever his landlord might demand. After some time it was decided that he was also liable to ejectment on notice to quit, and now he has no protection against the imposition of a rack-rent or arbitrary eviction.

The provisions of the present Bill in regard to this class of ryots are to my mind extremely imperfect and inadequate. Justice requires that these ryots should be placed in the position they were in 1859. Under the present Bill there is nothing to prevent a zemindar in the future from rack-renting and ejecting them.

If the Legislature, while professing the right to interfere on behalf of the ryots, does not consider it expedient to give them what in my opinion is only fair justice and restore them to the position they held in 1859, the least it can do is to give them substantial compensation for disturbance. Then after agreeing to pay a fair rent they are arbitrarily evicted by the zemindar. The Government of Bengal proposes to check the capricious exercise of power on the zemindar's part by awarding compensation for disturbance up to a maximum of three years' rent. That I consider an inadequate check.

47. In connection with the present Bill the recent land legislation for Ireland has been referred to, and there is no doubt it deserves the most serious consideration. The claim of the tenants in Ireland to compensation for disturbance was weak in comparison with the claim of the ryots in Bengal, and yet the former obtained compensation on the following scale:—

Where the rent is thirty pounds (three hundred rupees) or under, a sum not exceeding seven years' rent; when the rent is above thirty pounds, a sum not exceeding five years' rent.

Where the rent is above fifty pounds and not exceeding one hundred pounds (one thousand rupees), a sum not exceeding four years' rent.

Where the rent is above one hundred pounds and not exceeding three hundred pounds (three thousand rupees), a sum not exceeding three years' rent.

Where the rent is above three hundred pounds and not exceeding five hundred pounds (five thousand rupees), a sum not exceeding two year's rent.

Where the rent is above five hundred pounds, a sum not exceeding one year's rent.

This is the scale which Parliament considered fair and equitable, although the legal claim to compensation was weak. Here the claim is strong. In Ireland the tenants had no legal ground for saying "our rights were such and such and we have been deprived of them." Here the ryots have been unwittingly deprived of their rights by recent legislation and recent decisions of the Courts, and I think they may fairly ask, if those rights cannot be restored, as they should, that compensation on the same or a higher scale should be granted to them. If this be not done,—if the right to hold their land as long as they pay a fair and equitable rent be not secured to all cultivating ryots,—then I think it better for *them* that the Bill should be abandoned and matters allowed to remain as they are. The force of circumstances might in a few years' time necessitate legislation of a far more comprehensive nature in the interests of the tenantry than any now proposed by the Government of Bengal.

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GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

BENGAL TENANCY BILL, 1885, No. III.

The following Further Report of the Select Committee on the Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 13th February, 1885 :—

WE, the undersigned Members of the Select Committee to which the Bill to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal was referred, have considered the Bill and the papers noted in the schedule annexed, and have now the honour to submit this our further Report.

It must be understood that in referring to the decisions of the Committee we state the view of the majority where there has been any difference of opinion.

CHAPTER I.

PRELIMINARY.

2. We have made some slight amendments in, and additions to, this chapter, but few of them call for notice here.

The definition of "estate" and that of "proprietor", which is dependent on it, have given rise to the erroneous supposition that it was intended to exclude Government tenants from the operation of the Bill. We have now so amended the definitions as to remove any misapprehension on this point.

3. As it seems reasonable that the provisions of the Bill contained in sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII and Schedule III should apply to money recoverable under any enactment as if it was rent, we have added to the definition of "rent" a clause providing that "rent" shall in those portions of the Bill include such money.

CHAPTER II.

CLASSES OF TENANTS.

4. The only amendments calling for notice in this chapter are—

1st—that we have omitted all reference to the raiyat converted into a tenure-holder under section 37 of the Bill No. II, as it has been determined to omit section 37 (see *infra*, paragraph 17); and

2nd—that we have altered section 5 (5) so as to provide that a tenant holding more than 100 bighás shall be presumed, until the contrary is shown, to be a tenure-holder, without raising an issue as to his having sub-let any part of his holding.

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CHAPTER III.

TENURE-HOLDERS.

5. We have in section 7 of this chapter included, among the matters to which a Court must have regard in enhancing the rent of a tenure-holder, the questions "whether the tenure was originally granted at a specially low rent for the purpose of reclamation" and "whether any fine or premium was paid on the creation of the tenure."

6. We have omitted section 8 of the Bill No. II, which provided that a Court should not enhance the rent of a tenure to more than double the previous rent.

7. We have in section 9 made the interval which must elapse between successive enhancements of the rent of a tenure the same as in the case of an occupancy-holding, namely, fifteen years.

8. We have omitted the provisions of this chapter specially applicable to patní tenures, and Chapter XVI, relating to summary sale of patní and other tenures for arrears, as we are, on further consideration, reluctant to interfere at present with the existing law regarding patní tenures, and are of opinion that any extension of the patní sale law to other tenures should be reserved for consideration in connection with the Bengal Registration Bill, to which we shall presently have to refer.

9. We have in sections 12 to 16 of the Bill so far altered the system of the registration of transfers of, and successions to, permanent tenures as to provide merely for enabling the landlord to register such transfers instead of compelling him to do so.

The Bill in its previous stages provided for a compulsory system of registration by the landlord. This, it was objected, would not work satisfactorily, especially as the landlords of many tenure-holders are poor and ignorant persons, having no regular office and no means of establishing one or maintaining a suitable register. At the same time it was pointed out that the establishment of an official registry would confer a great benefit on all concerned, and especially on the landlords, who might, if such a registry were established, be allowed to realize their rents by the process of summary sale which is now available only in the case of a limited class of tenures.

A Bill for the establishment of an official registry is at this moment before the Bengal Legislative Council, and the object we have set before ourselves in re-casting the portion of our Bill now under consideration has been to frame its provisions in such a manner as to secure to the Collector, who will be the officer entrusted with the preparation and maintenance of the official register, early and accurate information of all transfers and successions which may from time to time take place.

We have not overlooked the fact that the substitution of official registration for registration in the landlord's sheristá would deprive the landlords of the fees which it was proposed to allow them under the Bill as originally framed, and which, it is believed, they commonly realize at present, though in most cases without any warrant of law. We think that the fees prescribed by the Bill in its earlier stages may well be paid to the landlord, even though he is to be relieved of the duty of registration.

10. The provisions we have inserted in the Bill in order to give effect to these views are as follows:—

First, as regards voluntary transfers (section 12), the simplest plan has appeared to us to be to require that every such transfer shall be registered under the ordinary law relating to the registration of documents. It is understood that the Local Government will make all arrangements requisite for facilitating the registration of such transfers. The parties applying for registration will be required to pay to the registering officer "the landlord's fee" and a process-fee for the service of notice on the landlord. When the registration has been completed, the registering officer will forward to the Collector the landlord's fee and a notice of the transfer containing all necessary particulars, and the Collector will thereupon cause the landlord's fee to be paid to the landlord and the notice to be served upon him, at the same time taking any such steps as may be prescribed by the measure now pending before the Bengal Legislative Council for the entry of the transfer in his official register.

When a transfer takes place by sale in execution of a decree (sections 13 and 14), the procedure will be substantially similar, the notice and the fee being sent to the Collector by the Court, except that, following the lines of the Bill in its earlier stages, we have not provided for the payment of a fee to the landlord when the sale takes place in execution of a decree for arrears.

In the only remaining case of transfer, namely, that of transfer by summary sale, the Collector will have in his own office all the information requisite for the purpose of registration.

11. When a succession to a permanent tenure takes place, the party succeeding will be bound (section 15) to give notice to the Collector and pay to him the landlord's fee and the process-fee above referred to, and the Collector will then proceed as above described.

12. In order to compel the person succeeding to comply with the provisions of this section, we have retained, for the case of successions, the provision of section 18 of the Bill No. II, under which a person succeeding will be debarred from recovering his rent by suit, distraint or otherwise, until he has given the notice and paid the fees prescribed.

CHAPTER V.

Occupancy-raiyats.

13. The first alteration in this chapter which appears to call for notice has reference to the area over which the status of settled raiyat is to hold good.

In the 11th paragraph of our first Report we referred to the inconvenience which might arise in certain exceptionally large estates from the status holding good over the whole estate, and this has given rise to considerable discussion. The Bengal Government, in the 22nd paragraph of its report of the 15th September, 1884, stated that "the majority of the officers consulted disapproved of the definition of 'settled raiyat' as given in the Bill," and that "the proposal which found favour was the elimination of the word 'estate' from the definition".

That Government, nevertheless, was of opinion that it was necessary to retain the word "estate" in order to meet the danger of the acquisition of the occupancy-right being prevented by shifting raiyats from one village to another within the estate.

It seemed to us that this danger was not so great as to justify the extension, over all portions of an estate of the status of "settled raiyat" acquired in one portion of it, since estates are frequently divided among numerous tenure-holders, who would have no opportunity of examining each other's books, or knowing anything about each other's raiyats. The danger in either direction is not serious, for in the vast majority of cases the raiyat is practically tied to his own village; and we felt, moreover, that by confining the status to the village we should be proceeding in closer conformity to the original conception of a khúdkásht raiyat, which, as explained in the Statement of Objects and Reasons of the Bill, it has been always intended to keep in view.

14. We have in section 22 re-cast sections 28 and 29 of the Bill No. II so as to carry out more precisely the intention with which they were framed, and we have inserted a sub-section (2) providing that if the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder it shall cease to exist.

15. Sections 23 to 26 of the amended Bill take the place of sections 31 to 36 of the Bill No. II; but, except a saving of custom as regards the descent of the occupancy-right in section 26, the only important change they involve is the omission of all provisions regarding the transfer of the occupancy-right, which, apart from the matter of sale in execution of a decree for rent (dealt with in Chapter XIV), we now propose to leave to custom as under the existing law.

16. The reasons for and against the proposal to make the occupancy-right everywhere transferable by an express legislative enactment have been so fully discussed within the last three years, and are so well known to all interested in such matters, that we shall not lengthen this Report by attempting to recapitulate them. It is enough to say that the Government of Bengal, in their letter of the 15th of September last, proposed to leave the law relating to the transferability of the right for the present untouched in Behar, and that on a further consideration of the question we are of opinion that the most prudent course will be to omit the provisions relating to voluntary transfer altogether from the present Bill. This decision has enabled us to omit all reference to the question of pre-emption.

17. The 37th section of the Bill No. II, which provided that raiyats sub-letting their land should in certain cases be deemed to be converted into tenure-holders, has met with much adverse criticism, and we now propose to omit it.

The remaining provisions as to sub-letting we have relegated to Chapter IX, where they will be found with certain modifications and additions.

18. In regard to the enhancement of rent in the case of occupancy-rights the Government of Bengal made certain proposals in their letter of 15th September, 1884, which are summarised in the 84th paragraph of that letter as shown on the margin.*

In regard to VI and VII we said in paragraph 34 of our Report last year that in applying the proportion rule in the case of prices the question of making some deduction to cover the effect of increased prices on the cost of cultivation would receive further consideration. The Government of Bengal recommended a deduction of one-half on this account.

* VI.—To recognize the principle that, in the absence of reason to the contrary, the Courts shall regard a rise in the price of staple food-grain as entitling the landlord to an enhancement of rent.

VII.—To fix the percentage by which the enhanced rent shall exceed the former rent at a definite proportion (one-half is suggested for consideration) of the percentage by which the enhanced prices exceed the former prices, the other portion going as an allowance for increased cost of production.

VIII.—To assign to enhancements on the ground of landlords' improvements a maximum limit of double the former rent.

IX.—To abandon the provision for enhancement on the ground of a "prevailing rate," experience having shown that no such rate exists, and that the position assigned to it in the present law has led to the construction of collusive and fictitious rates for the purpose of forcing up rents.

X.—To abandon fluvial action as a ground of enhancement of rent, but to recognize freedom of contract between landlord and raiyat in regard to new alluvium.

XI.—To withdraw the arbitrary limitations on enhancements by suit on account of a rise in prices, and to allow contracts for enhancement of rent out of Court up to a maximum limit of two annas in the rupee (12½ per cent) of the former rent, and for a minimum period of 15 years.

XII.—To withdraw all restrictions on freedom of contract in respect of the *initial* rent of all land which may lapse to the landlord from whatever cause.

XIII.—To re-introduce the provision that the rent of the occupancy or non-occupancy raiyat shall not exceed one-fifth of the value of the gross produce calculated in staple food-grains.

We recognised the difficulty of making the Courts ascertain the actual cost of production, and as it was necessary to fix an arbitrary limit we have fixed the deduction at one-third as a general rule.

19. With reference to VIII we did not think we could justify any arbitrary limit in terms of a fractional proportion of the old rent being placed on enhancement when made on the ground of landlords' improvements.

20. We were unable to accept the proposal (IX) to abolish the prevailing rate as a ground of enhancement, inasmuch as this has, in one shape or another, been a ground of enhancement ever since the Permanent Settlement, and as it is the only means by which a landlord can remedy the effects of fraud or favouritism on the part of his agent or predecessors. In view, however, of the dangers which are said by competent authorities to arise from the artificial manufacture of rates, and from the very wide interpretation given to the term "places adjacent," we have somewhat modified the terms of the section, have limited enhancement to the rate ascertained to be the prevailing rate *in the village*, and have required that this rate should be determined with reference to the rates actually paid during a period of not less than three years before the institution of the suit.

21. We were not able to accept the proposal (X) to abandon fluvial action as a ground of enhancement.

22. On the other hand, we have accepted the proposal (XI) to limit enhancements by registered contract (except on the ground of improvement made by the landlord) to two annas in the Rupee (12½ per cent.) carrying with it in all cases a right to hold at the enhanced rent for 15 years, and we have at the same time struck out all the fractional limits placed on enhancement in Court by sections 44 (*a*), 45 (*b*) and 47 (*b*) of the Bill No. II.

23. The restrictions which it was proposed by section 42 to impose in certain cases on the initial rents payable by settled raiyats have, we think, been shown to be impracticable, and we have therefore, as proposed by the Government of Bengal (XI), omitted the section.

24. We were not able to accept the recommendation numbered XIII.

25. The only other amendments in the chapter which appear to call for special notice are as follows:—

(*a*) we have required Courts, in dealing with claims to enhancement on the ground of a rise in prices, to take decennial periods instead of quinquennial periods for the purposes of comparison, except when owing to the absence of price-lists or any other cause they find it impracticable to take such periods, in which case they may take any shorter periods;

(*b*) we have amended section 39 so that the price-lists prepared under it shall be merely presumptive evidence instead of being conclusive, as provided in the corresponding provision of the Bill No. II. The Bengal Government are of opinion that their arrangements are not at present so perfect as to justify these lists being made conclusive evidence;

(*c*) we have in section 40 included among the matters to be taken into consideration by an officer commuting rent the charges incurred by the landlord in respect of irrigation under the system of rent in kind and the arrangements made on commutation for continuing those charges.

CHAPTER VIII.

General Provisions as to Rent.

26. We have omitted from the section (50) which enacts the well-known presumption arising from holding at a rent unchanged for 20 years the sub-section which made the presumption applicable to produce-rents, as opinions generally were opposed to it.

27. We have, in section 52, providing for the alteration of rent on the ground of an alteration in the area of the holding, assimilated the provisions of the two clauses (*a*) and (*b*), which provide respectively for increase and reduction; and we have inserted the following new sub-section to guide the Courts in cases where there may be a dispute as to the area for which the tenant has been paying rent:—

"In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

"(*a*) the origin and conditions of the tenancy; for instance, whether the rent was a consolidated rent for the entire holding;

"(*b*) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;

"(*c*) the length of time during which the tenancy has lasted without dispute as to rent or area; and

"(*d*) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit."

We have also brought the section under the general rule that the Court shall not fix a rent which would be unfair or inequitable.

28. We have substituted for the section of the Bill No. II regulating the instalments in which rent is to be payable the following simpler provision, namely:—

"53. Subject to agreement or established usage a money-rent payable by a tenure-holder or raiyat shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year";

and to prevent raiyats being harassed by successive suits for arrears, when by agreement or custom a larger number of instalments than four may be established, we have inserted in Chapter XIII a section (147) enacting in effect that such suits shall not be instituted against a raiyat oftener than once in three months.

29. We have made certain amendments in the division of the chapter relating to receipts and accounts, but the only one calling for special notice is the insertion of a new section (59) requiring the Local Government to provide and keep on sale forms of receipts and accounts. It will be for the landlords to choose whether they will use those forms, but we believe they will be found convenient.

30. In pursuance of the policy of the Bengal Act for the registration of proprietors, we have inserted the following section:—

Effect of receipt by registered proprietor.

"60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate or of his agent authorized in that behalf shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

"But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee."

31. We have likewise modified in some particulars the provisions relating to the deposit of rent, but need only mention the provision that the deposit shall be made in the Court having jurisdiction to entertain a suit for the rent, and the limitation of the second ground on which an application to deposit rent may be made to cases where the tenant has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the landlord will not be willing to receive the rent or grant a receipt.

32. We have omitted the second sub-section of section 77 of the Bill No. II, which enacted that, when the right, title and interest of a tenant is brought to sale in execution of a decree obtained by a person other than the landlord, the landlord shall be entitled to have his rent paid first out of the sale-proceeds, and we have so re-cast the section as to make it clear that in the case of a tenure-holder, raiyat at fixed rates or occupancy-raiyat the landlord's remedy for arrears will be sale and not ejectment, and that the arrears will be a first charge on the tenure or holding.

33. We have substituted for section 79 of the Bill No. II a section (67) providing that an arrear of rent shall bear simple interest at the rate of 12 per cent. per annum from the expiration of that quarter of the agricultural year in which the instalment falls due.

34. To meet those cases in which transfer without the landlord's consent is a valid custom, we have provided in section 73 that, until notice of such a transfer is duly served on the landlord, the transferor and transferee shall be jointly and severally liable for arrears of rent accruing after the transfer.

CHAPTER IX.

Miscellaneous Provisions as to Landlords and Tenants.

35. We have in section 79 provided that a non-occupancy raiyat shall be entitled to construct a well for the irrigation of his holding. A well constructed under this provision will be an

improvement within the meaning of the Act, and the raiyat will on being ejected be entitled to receive compensation for it. The high importance of facilitating and encouraging the construction of all works of irrigation in this country with a view to the prevention of famine points to the necessity of this.

36. We have inserted a new section (84) giving power to landlords to acquire by compulsory sale, through the Civil Court and at a price to be fixed by the Court, any land in their estate required for building purposes or for religious, charitable or educational objects. The necessity of some such power, especially with a view to provide building-sites either for new tenants or in cases of diluvion, has been strongly urged upon us. We have guarded the section against abuse by requiring the certificate of a Collector as to the sufficiency of the reason before action can be taken under it.

37. We have inserted a section (85) providing that if a raiyat sub-lets otherwise than by a registered instrument the sub-lease shall not be valid against his landlord unless made with his landlord's consent, that a sub-lease by a raiyat shall not be admitted to registration if it purports to create a term exceeding nine years (seven years was the longest term for which an occupancy-raiyat could sub-let under section 38 of the Bill No. II) and that where a raiyat has without his landlord's consent granted a sub-lease by an instrument registered before the commencement of the Act the sub-lease shall not be valid for more than nine years from the commencement of the Act.

38. In dealing with surrender and abandonment the only changes made by us which need here be noticed are the provisions which we have inserted to check collusive surrender or abandonment in fraud of the rights of third parties. The necessity for this was brought to notice in paragraph 69 of the Bengal Government's letter of 15th September, where it is shown that raiyats not unfrequently sub-let the whole or a portion of their holdings in consideration of a large bonus for a term of years. To leave the interests of sub-lessees in such cases entirely at the mercy of the sub-lessor in collusion with his landlord would do serious practical harm. We have therefore provided (section 86 (*b*)) that the surrender of a holding which is subject to a registered incumbrance shall not be valid without the consent of the incumbrancer and the landlord, and in case of abandonment we have provided (section 87 (*d*)) that the sub-lease shall only be avoided after the sub-lessee has had the opportunity of taking over for the unexpired period of his sub-lease the full rights and liabilities of his lessor in regard to the rent of his entire holding. These provisions appear to us to present the only method by which protection can be given to the sub-lessee without injury to the landlord or without risking the conversion of these sub-leases into permanent transfers. In the case of sale in execution of a decree for rent, the sub-lessee has the same protection as other incumbrancers under Chapter XIV.

39. We have in section 88 provided that a division of rent shall not be valid as against the landlord without his consent in writing. This we understand to be the existing law.

40. We have amended section 90 so as to make it clear that a landlord is not entitled to enter on and measure land exempt from the payment of revenue.

41. We have in section 92 substituted the acre for the standard bíghá as the official standard of measurement, and have empowered a Court or Revenue-officer to direct, where such a course may seem more convenient, that a measurement shall be made by any other specified standard.

CHAPTER X.

Record-of-rights and Settlement of Rents.

42. In the Bill No. II the two processes known as the record-of-rights and the settlement of rents were dealt with separately, but it seemed to us more convenient that they should be amalgamated, and we have accordingly given to the Revenue-officer who is appointed to settle disputes during the operation of recording rights a similar power to settle disputes regarding rents.

We have, however, provided for two distinct kinds of settlement. Under the ordinary settlement, the officer will only have the power to settle rents when a settlement of land-revenue is being made or a question between the landlord and tenant arises, and such rents as he settles will generally be fixed for a term of years; in other cases his recorded entries will only have a presumptive value; he can, moreover, only reduce rents on the grounds under which reduction is demandable in the Civil Courts. Under the special settlement, which will only be undertaken with the previous sanction of the Government of India, and which is meant to be applied only in circumstances in which the operation of the ordinary law is likely to prove insufficient, the Settlement-officer will have power to settle all rents, and will, moreover, have

power to reduce rents on other grounds than those ordinarily applicable. We think that in the exceptional cases in which it may be necessary to have recourse to this procedure the Government should have power to go to the root of the matter, and to put its settlement on a thoroughly stable footing.

Tables of Rates.

43. We have decided, in deference to the opinion of many experienced officers and with the consent of the Government of Bengal, to omit the chapter (XI of Bill No. II) providing for the preparation of tables of rates. It was evident that the procedure would only be made use of in rare and exceptional cases, and a more effectual method of treating these cases is provided in the Settlement chapter.

CHAPTER XI.

Record of Proprietors' Private Lands.

44. The only amendment calling for notice in this chapter is the insertion of a provision in section 116, that nothing in the chapter (VI) relating to non-occupancy-raiyats shall apply to a proprietor's private lands. This merely expresses what was always intended, though by an oversight it was not previously provided for.

CHAPTER XII.

Distraint.

45. We have inserted two sections of some importance at the end of this chapter.

The first (141) provides that when the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application to the Court under this chapter, it may by order authorize the landlord to distrain by himself or his agent; but that a landlord so distraining shall forthwith give notice to the Court, and that the Court shall thereupon depute an officer to take charge of the produce distrained, and proceed thereafter as if he had distrained under the ordinary procedure. The other section (142) added to this chapter empowers the High Court to make rules regulating the procedure under it.

CHAPTER XIII.

Judicial Procedure.

46. Section 147 has already been noticed (*supra* paragraph 28).

47. We have in section 148 added to the sections of the Civil Procedure Code, which are not to apply to rent-suits, section 326, empowering the Court to authorize the Collector to stay an execution sale of land in certain cases.

48. We have in section 153 excepted from the rules restricting appeals in rent-suits cases in which a question of the amount of rent annually payable by the tenant has been determined.

49. We have omitted section 172 of the Bill No. II, which required all mutual claims between the landlord and tenant as such to be inquired into and determined in every suit and proceeding for ejectment.

CHAPTER XIV.

Sale for Arrears under Decree.

50. We have added to the "protected interests" in section 160—

"(e) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI by a Court or under Chapter X by a Revenue-officer."

The section as it stood would probably have been construed to cover such cases, but we think it well to leave no room for doubt on the point.

51. We have, in order to shorten proceedings, inserted in section (163) a clause enacting that in cases under this chapter the order of attachment and the proclamation of sale required by section 287 of the Civil Procedure Code shall be issued simultaneously.

52. We have, at the suggestion of our honourable colleague Bábú Peári Mohan Mukerji, inserted a new section (174) allowing a judgment-debtor to apply to set aside a sale of his tenure or holding, on depositing in Court within thirty days from the date of sale for payment to the decree-holder the amount recoverable under the decree with costs, and for payment to the purchaser a sum equal to 5 per cent. of the purchase-money. Applications under section 311 of the Code of Civil Procedure to set aside sales cause expense and annoyance to the decree-holder and auction-purchaser. It is believed that they are often instituted merely with a view to recovering the tenure or holding which has been sold, and it is anticipated that, if a judgment-debtor is allowed to recover his property by depositing after the sale the amount decreed against him, the number of these applications will be considerably diminished.

CHAPTER XV.

Contract and Custom.

53. A question having been raised as to how far section 210 of the Bill No. II, which was intended to have retrospective effect, should be allowed such effect, we have carefully considered each provision of that section, and have come to the conclusion that some of those provisions ought, with reference to this point, to be treated differently from others. The way in which we propose to treat the matter will be best seen from the new section we now propose, which runs as follows:—

Restrictions on exclusion of Act by agreement.

"178. (*1*) Nothing in any contract between a landlord and tenant made before or after the passing of this Act—

"(*a*) shall bar in perpetuity the acquisition of an occupancy-right in land, or

"(*b*) shall take away an occupancy-right in existence at the date of the contract, or

"(*c*) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

"(*d*) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

"(*2*) Nothing in any contract made between a landlord and tenant since the 15th day of July, 1880,* and before the passing of this Act shall prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land.

"(*3*) Nothing in any contract made between a landlord and tenant after the passing of this Act shall—

"(*a*) prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land;

"(*b*) take away or limit the right of an occupancy-raiyat to use land as provided by section 23;

"(*c*) take away the right of a raiyat to surrender his holding in accordance with section 86;

"(*d*) take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage;

"(*e*) take away the right of a raiyat to sub-let subject to, and in accordance with, the provisions of this Act;

"(*f*) take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52;

"(*g*) take away the right of a landlord or tenant to apply for a commutation of rent under section 40; or

"(*h*) affect the provisions of section 67 relating to interest payable on arrears of rent."

54. To meet the important case of a lease for the reclamation of waste land to which these provisions are not suitable, we have added the following proviso:—

"Provided as follows:—

"(i) Nothing in this section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would, under Chapter V, be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right."

* This was the date of the publication by the Government of Bengal of the Rent Commission's Report and Draft Bill.

55. We have further provided that the section shall not affect those contracts which are occasionally entered into for the temporary cultivation of orchard land with agricultural crops.

56. We have in section 180 put útbandi lands on the footing on which chur lands were placed by section 213 of the Bill No. II, that is to say, no occupancy-right will be acquirable in them until they have been held for twelve years, and meantime the tenant will be bound to pay whatever rent may be agreed on between him and his landlord. We have further provided that Chapter VI of the Bill shall not apply to such lands.

57. We agree with the Government of Bengal in thinking that it is not desirable to make any special provision regarding the lands known as "hál-hasili," and we have accordingly omitted all references to them in this chapter.

58. We have considered the proposals of the Government of Bengal regarding homestead lands, and find that they practically resolve themselves into this, that the tenure of such lands should, as provided by section 216 of the Bill No. II, be regulated by local custom, with this addition, however, that, subject to local custom, they should be regulated by the provisions of the Bill applicable to land held by a raiyat. We have amended the section (182) on these line.

CHAPTER XVII.

SUPPLEMENTAL.

59. We have in section 189 added to the powers which may be conferred on officers by the rules to be made by the Local Government—"any power exerciseable by any officer under the Bengal Survey Act, 1875."

60. We have also inserted the following new section, which speaks for itself :—

"194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition."

Tenant not enabled by Act to violate conditions binding on landlord.

61. Lastly, we have added a section (196) providing that "this Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council." In the absence of some such provision as this, the Bengal Legislative Council would, owing to the wide extent of ground covered by this measure of the Supreme legislature, find itself practically debarred for all time to come from dealing with almost every question affecting the relations of agricultural landlords and tenants.

62. In the 99th paragraph of our former Report we mentioned certain points on which we desired further information, and on which we solicited the opinions of the Local Government or High Court or both, and to these it is necessary briefly to allude in so far as they have not been disposed of by the foregoing remarks.

63. The first of these points, which was referred to the Local Government, was "whether, with reference especially to landlord's improvements, it is desirable to empower Revenue-officers to arrange for the cutting of irrigation-channels, the distribution of water and the payment of compensation, and, if so, what form such provisions should take."

We are fully sensible of the great importance of this question, but on full consideration we agree with the Government of Bengal in thinking that a discussion of it would be out of place in connection with the present Bill, and that it will be most appropriately treated in connection with the irrigation law, which will probably soon come under revision in Bengal.

64. The only other points specially referred to the Local Government, and to which we have not already adverted, were certain proposals to extend the patní sale procedure. Those proposals did not commend themselves to the Local Government, and now that the patní procedure is to be excluded from the present Bill, they would more properly be reserved for future consideration.

65. The remaining points to which we think it necessary to advert had reference to the question as to the possibility of devising some simplification of the procedure in rent-suits. In paragraph 88 of our former Report we said—"For ourselves we must confess that, after the most anxious consideration of the various schemes which have been propounded for shortening and simplifying the procedure in rent-suits, we are unable to suggest anything of importance in this direction, which would not involve a serious risk of failure of justice." We, however,

proposed that certain suggestions which had been made should be referred for the opinion of the High Court. The reply of the Honourable Judges is among the papers before us, and we regret to find that, as we apprehended, they too are unable to strike out any royal road to the result desired. They disapprove of the specific suggestions made, and they state it as their opinion that the true remedy for the evils complained of is to be found in executive rather than in legislative action, that is to say, in an increase in the judicial staff and a reduction of the court-fees.

Since the reply of the Honourable Judges has been received, further proposals have been submitted to us, and in particular a scheme put forward by Bábú Mohiny Mohun Roy, on which the opinions of certain officers have been taken, but we regret to say we have not found among them anything which would materially abridge the procedure without entailing a risk of serious failure of justice. The executive measures referred to by the High Court will, doubtless, receive careful consideration at the hands of the Government.

66. The publication ordered by the Council has been made as follows :—

In English.

Gazette.	*Date.*
Gazette of India	29th March, and 5th and 12th April, 1884.
Calcutta Gazette	2nd, 9th and 16th April, 1884.

In the Vernaculars.

Province.	*Language.*	*Date.*
Bengal	Bengali	29th April, 1884.
	Hindi	6th May, 1884.
	Uriya	8th May, 1884.

67. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

S. C. BAYLEY.
RIVERS THOMPSON.*
C. P. ILBERT.
LAKSHMESHWAR SINGH OF DARBHANGA.*(*a*)
J. W. QUINTON.
T. M. GIBBON.*
AMÍR ALÍ.*(*b*)
W. W. HUNTER.*
H. J. REYNOLDS.*
PEARI MOHAN MUKERJI.* (*c*)
G. H. P. EVANS.*

The 12th February, 1885.

* Signed subject to dissent on certain points.

(*a*) I sign this Report as it represents the views of the majority, but I reserve to myself the right of recording a separate dissent.

(*b*) I object to some of the main provisions of the Bill and have recorded a separate dissent.

(*c*) This Report represents the views of the majority. I object to the main principles of the Bill and record a separate dissent.

SCHEDULE.

Endorsement by Officiating Under-Secretary to Government of India, Revenue and Agricultural Department, No. 197—1-63, dated 13th March, 1884, and enclosures [Papers No. 42].

From Bábú Pronob Náth Ghosál, Náib, Roy Luchmiput Sing Bahadur's Zamíndárí, Kutabpur, District Rungpur, dated 24th April, 1884 [Paper No. 43].

Endorsement by Under-Secretary to Government of India, Revenue and Agricultural Department, No. 491—9-24R., dated 23rd July, 1884, and enclosures [Papers No. 44].

Office Memorandum by Revenue and Agricultural Department, No. 499R., dated 25th July, 1884 [Papers No. 45].

From Officiating Registrar, High Court, Calcutta, No. 1986, dated 8th August, 1884 [Paper No. 46].

Extract from *The Bengálí* of 30th August, 1884 [Paper No. 47].

From Officiating Registrar, High Court, Calcutta, No. 2611, dated 15th September, 1884, and enclosure [Papers No. 48].

„ Bábú Kishori Lál Sarkár, dated 21st September, 1884 [Paper No. 49].

„ Secretary, British Indian Association, No. 87, dated 23rd September, 1884, and enclosure [Papers No. 50].

Endorsement by Under-Secretary to Government of India, Revenue and Agricultural Department, No. 643—926, dated 23rd September, 1884, and enclosures [Papers No. 51].

Note by Bábú Kishori Lál Sarkár [Paper No. 52].

From Secretary to Government, Bengal, No. 1906T.R., dated 15th September, 1884, and enclosures [Papers No. 53].

„ Officiating Under-Secretary to Government, Bengal, No. 2071T.R., dated 29th September, 1884, and enclosures [Papers No. 54].

Memorial of Committee of Orissa People's Association, dated 21st October, 1884 [Paper No. 55].

Memorial of Middle Tenure-holders of the Sub-division of Jhenidah, District Jessore [Paper No. 56].

Endorsement by Under-Secretary to Government of India, Revenue and Agricultural Department, No. 749—9-35R., dated 31st October, 1884, and enclosures [Papers No. 57].

From Officiating Registrar, High Court, Calcutta, No. 2759, dated 3rd November, 1884, and enclosure [Papers No. 58].

From Officiating Registrar, High Court, Calcutta, No. 2943, dated 20th November, 1884, and enclosure [Papers No. 59].

From Honorary Secretary, Behar Landholders Association, dated 27th October, 1884 [Paper No. 60].

From Officiating Under-Secretary to Government, Bengal, No. 2201T.R., dated 9th October, 1884, and enclosure [Papers No. 61].

From Bábú Rajkissore Mookerjea, Cultivator-raiyat, Utterpára, dated 24th November, 1884, and enclosure [Papers No. 62].

Notes by the Hon'ble T. M. Gibbon [Papers No. 63].

From Officiating Under-Secretary to Government, Bengal, No. 1926—1009L.R., dated 28th November, 1884, and enclosure [Papers No. 64].

From Bábú Umesh Chundra Ghosh, Senior Pleader, Jessore, dated 24th November, 1884, and enclosure [Papers No. 65].

From Bábú Rajkissore Mookerjee, Utterpára, dated 5th December, 1884, and enclosure [Papers No. 66].

From Secretary to Government, Bengal, No. 2002—1038 L. R., dated 4th December, 1884, and enclosures [Papers No. 67].

From Officiating Under-Secretary to Government, Bengal, No. 2013—1041 L. R., dated 4th December, 1884, and enclosures [Papers No. 68].

From Officiating Under-Secretary to Government, Bengal, No. 1980—1024 L. R., dated 3rd December, 1884, and enclosures [Papers No. 69].

From Secretary, Bhagulpore Landholders Association, No. 52, dated 3rd December, 1884, and enclosures [Papers No. 70].

From Officiating Under-Secretary to Government, Bengal, No. 2085—1075 L. R., dated 10th December, 1884, and enclosures [Papers No. 71].

From Bábú Bepin Behari Sircar, dated 1st December, 1884, and enclosure [Papers No. 72].

From Officiating Under-Secretary to Government, Bengal, No. 2091—1077 L. R., dated 10th December, 1884, and enclosures [Papers No. 73].

A Review of the Procedure sections of the Bill (No. II), and a few suggestions for the simplification of Procedure, by Bábú Mohiny Mohun Roy [Paper No. 74].

From Secretary, Behar Landholders Association, dated 13th December, 1884, and enclosures [Papers No. 75].

From Secretary, Central Committee of Landholders of Bengal and Behar, No. 123, dated 29th December, 1884, and enclosure [Papers No. 76].

Memorial of Khás Mahál Raiyats of Government Estate Jalamuta, Villages Paikbhera, Harmasah, &c., District Midnapur [Papers No. 77].

From Bábú Sarat Chunder Mukhopadhya, to Private Secretary to His Excellency the Viceroy, dated 27th December, 1884, and enclosure [Papers No. 78].

From Bábú Rajkissore Mukerjea, Utterpára, dated 8th January, 1885, and enclosure [Papers No. 79].

From the Mahárájá of Burdwan, No. L.9—301, dated 7th January, 1885, and enclosure [Papers No. 80].

From Officiating Registrar, High Court, Calcutta, No. 126, dated 14th January, 1885, and enclosure [Papers No. 81].

Office Memorandum by Private Secretary to His Excellency the Viceroy, No. 111, dated 19th January, 1885, and enclosures [Papers No. 82].

Office Memorandum by Private Secretary to His Excellency the Viceroy, No. 113, dated 17th January, 1885, and enclosures [Papers No. 83].

From Bábú Ketaki Bilas Rai, Kirtipur, Jessore, dated 26th January, 1885, and enclosure [Papers No. 84].

Endorsement by Officiating Under-Secretary to Government, Bengal, No. 327-128 L.R., dated 31st January, 1885, and enclosures [Papers No. 85].

Memorandum of dissent from the decisions of the Select Committee on the Bengal Tenancy Bill.

In signing the Report of the Select Committee on this Bill I wish to place on record my opinion that, having regard to all that has been elicited by the Commissions and enquiries of the last six or seven years, the Bill inadequately meets the necessities of the case which called for legislation. It is unsatisfactory, in so far as it gives insufficient protection to all raiyats against excessive enhancements of rent, and no real protection in other directions to the non-occupancy-raiyat.

To enter briefly into details I note, *firstly*, that the change under which the limit of the "village" has been substituted for the "village or estate" in section 20 of the Bill, will seriously affect the fixity of the "settled" raiyat's tenure. As originally drawn, "estate" formed part of this section, and its adoption as part of the definition had the sanction of the Secretary of State. In that form no doubt the definition met with considerable opposition in Committee, but I was prepared to meet objections by accepting an arrangement whereby a permanent cultivator, when willing to pay a fair rent, should carry his *status* as a settled raiyat to any land in that portion of his landlord's estate as might be situated in the pargana or fiscal circle in which the raiyat resided.

Secondly, I have opposed the "prevailing rate" as a ground of enhancement. There is ample evidence in the recorded literature on the subject to shew that such a thing as a "prevailing rate" of rent does not exist in any part of the country. Under the law, as it stands, it is admitted that the zamíndárs have been unable to establish a "prevailing rate" in their suits for enhancement on this ground; and the consequence was that, failing proof, they created it fictitiously. The result has been demoralizing and very injurious to the raiyats, and I am afraid that the Select Committee, though animated by the very best intentions, has not provided any positive safeguard against the mischievous tendencies to which I have referred. On the contrary, their proposals on the subject will probably facilitate enhancements up to the *average* of rates prevailing in the village, and will thus place a much stronger power for enhancing rents in the hands of the zamíndárs than the present law permitted or ever contemplated.

Thirdly, the Bill as it leaves the Committee almost entirely abandons the non-occupancy-raiyat and the under-raiyat. They are practically unprotected, and such a result appears to me to be contrary to the intention with which the legislation on the rent question was undertaken, and contrary to the conclusions of authoritative opinion that the growth of the right of occupancy, as tending to establish a substantial peasantry, should be encouraged and advanced.

Lastly, the loss of the limitation of the maximum rent to one-fifth of the gross produce is a serious loss, specially as it affects the non-occupancy and under-raiyats. The pro-

posal to limit rents to a fraction of the gross produce in staple food-crops did not originate with me, though I accepted it and suggested the particular fraction of one-fifth. Indeed, had my views been approved in regard to the abolition of the "prevailing rate" as a general ground of enhancement, and in regard to the protection of the non-occupancy-raiyat, I should not have placed the stress I now do on the gross-produce limit. But as the majority of the Select Committee have rejected, one by one, every effectual check on rack-renting adopted by the Government of India in the original Bill, as they have also rejected the equivalents for those checks advocated by me without themselves proposing any substitutes, it seemed to me that the only hope of escape from the danger of a Bill for the unlimited enhancements of rent lay in a recurrence to the proposal made by the Government of India in their first Bill to limit rents to a share of the gross produce. I am, of course, conscious of the objections to which such a gross-produce limitation is open as a matter of theory; but theory and practice do not always coincide, and practically a gross produce limit on rents is indigenous to this country, had been asked for by the landlords, and recommended by the ablest among my predecessors. My views on the subject are not shared by a majority of the Committee, and the proposal fell to the ground. I have always admitted that in some Bengal districts the tenantry can well afford to pay higher rents, and I have endeavoured to provide landlords with reasonable facilities for enhancement. But in Behar rents are already too high, while there are many parts of Bengal in which rents are also excessive. Taking Bengal and Behar together, I cannot contemplate without anxiety a legislative measure whose tendency is to promote, without an ultimate check, a further increase of those rents.

I had hoped that the legislation now in hand, and which has been the subject of discussion and consideration of no less than four Lieutenant-Governors of Bengal, would have carried with it some measure of finality. In its present outcome it seems to me impossible to accept this Bill as a final settlement of the chief questions connected with a Tenancy Bill in the Lower Provinces of Bengal.

RIVERS THOMPSON.

The 12th February, 1885.

Memorandum of dissent from the decisions of the Select Committee on the Tenancy Bill.

ALTHOUGH I think the Bill as it now leaves the hands of the Select Committee an improvement on the Bill submitted to it for amendment, it still contains certain provisions with reference to which I differ with the majority in opinion, and on these points I would beg to record my dissent.

1. I object to the omission of the words "and the whole or part of it is sub-let" from section "5", sub-section "5". The word should be again inserted or the whole of the sub-section omitted.

Under the Bill a tenure-holder is a tenant "who has acquired a right to hold land for the purposes of collecting rents or bringing it under cultivation by establishing raiyats on it." A raiyat, is a person "who has acquired land for the purpose of cultivating it himself or by hired labour."

I cannot understand on what grounds the majority of the Committee deemed it necessary to over-ride the essential difference in the nature of the two tenancies, and to declare that all persons holding more than 33 standard acres of land shall be presumed to be tenure-holders until the contrary is proved.

To me it appears that the first and only enquiry to be made is whether the tenant cultivates it himself or sub-lets the whole or a portion of it. If he cultivates it himself it should be presumed that he is a raiyat until the contrary is proved. If he sub-lets a portion of it, it should be presumed that he is a tenure-holder, until he proves that he originally acquired the land for cultivating purposes, and that the tenants who hold under him are sub-tenants.

Our efforts in this instance should be confined to strengthening the position of the actual cultivators of the soil.

2. I dissent from the decision of the majority of the Select Committee to omit transferability from among the incidents attached to an occupancy-holding.

I have already exhausted every argument I can think of to induce the Government and the Committee to legalize and control transfer and failed to gain their support, it is unnecessary to recapitulate them here, I will therefore only record my dissent.

3. *Section 18, Chapter 3.*—The provisions of this chapter should be confined to mocurraree holdings, holdings admitted by the landlord to be held at fixed rents, and holdings the rents of which have been declared fixed in perpetuity under decrees of competent Courts. If this is not allowed, sections 15 to 22 of Bill No. 2 should be again inserted in the Bill in place of sections 12 (*3*) and 13.

All raiyati holdings acquired for the purposes of cultivation whether held at a fixed rent or at a rent subject to enhancement, should only be used for the purpose for which they were acquired, *viz.*, for the purposes of cultivation, and for the growth of crops. There can be no sufficient reason for allowing an ordinary cultivator to be ejected from his holding if he uses it in a manner to render it unfit for the purposes of the tenancy and at the same time to allow raiyats at fixed rates of rent to do, as they think right with the land even to destroying it whatever the rate of rent may be, whether subject to periodical enhancement or not, the purpose for which the land was originally acquired was the same in both instances and should remain so.

If the provisions of the chapter were confined to admitted rights, the injury to the landlord would be lessened, as they stand in the Bill, in every instance that a landlord sues under section 25 (*a*), the provisions of this chapter will be pleaded to debar suit.

If the above suggestions were adopted, it would not inflict any hardship on the tenant; if the tenant claiming to hold at fixed rates, but whose rights had not been admitted wished to avail himself of the privileges allowed him under this chapter, all he need do is to apply under section 157, to have the nature of his tenancy declared previous to availing himself of them.

If the operation of this chapter is not confined to mocurraree holdings, and holdings the rents of which have been declared fixed by a competent Court, sections 15 to 22 of Bill No. 2 should be again inserted in the Bill, or the landlord will be compelled to bring a suit to set aside every conveyance in which the holding is incorrectly described as a holding at fixed rates, when he receives notice of transfer.

4. The restrictions placed on voluntary enhancement under section 29, will have the effect of compelling the landlord to exact every piece of rent the law will permit him to demand, it prohibits all enhancement out of court, or it will induce the parties concerned to resort to deception and fraud to evade the payment of the heavy costs entailed upon them in a heavy law suit for enhancement of rents, they will fight it out to the bitter end or lie.

5. Section 35 I consider superfluous we have throughout the Bill directed the Courts to decree only fair and equitable rents, therefore to tell the Courts that they shall not decree unfair and inequitable rents is unnecessary. With an experienced judge it will have no weight but an inexperienced judge may attach undue importance to it and in doing so do substantial injustice to one of the parties concerned.

6. Under sections 48 and 49 we have effected too little for the protection of the sub-tenant, the actual cultivator of the soil.

The sub-tenant holding under a registered lease is, I think, amply protected short of allowing him to acquire occupancy-rights in the land, the Committee have gone as far as it is possible to go without encroaching on the rights of others, but the sub-tenant who holds under a verbal agreement or an agreement which cannot be accepted as evidence under the law is not sufficiently protected. I would wish to see the sub-tenant receive the same protection against hasty eviction, rack-renting, &c., as is afforded the non-occupancy-raiyat under the Bill.

7. Section 50 is an improvement on section 64 of Bill No. 2, but it does not go far enough. I am of opinion that the suggestions made in the Bengal Government letter of September, 1884, that the presumption should run from 20 years previous to the introduction of the suit, should be adopted, my reasons for wishing it so I stated in my dissent on the Bill No. 2, therefore need not repeat them here.

8. The penal clauses 59, 74 and 185 require modification as they stand, they will be harsh in their operation and may be used solely for the purpose of giving the landlord annoyance.

9. Section 89—2 prohibiting the landlords measuring lands oftener than once in ten years will have the effect of encouraging encroachments. As the landlords are prohibited from bringing suits for enhancement oftener than once in 15 years there is no necessity for this prohibition and the right to do so will, in all instances, be useful to them to test encroachments.

10. Section 188 limits the area of the landlords zeraut or home cultivation to all land held by him as such for 12 years continuously "previous" to the introduction of the Act, thereby preventing him from acquiring any more land as zeraut after the passing of the Bill.

It does not prevent his cultivating more land as home cultivation, but if he once lets it out of his possession, lets it to another person for one season, he will lose his rights in it for ever.

I think the period he is required to hold it for, in order so acquire zeraut rights in the land should run for a period of 12 years before or after the Act is introduced.

11. Section 173 contains a new provision in law, it permits a judgment-debtor to recover possession of his holding 30 days after it has been sold by decree of Court by paying in the amount of the decree.

I object to it as I think it will have an effect contrary to what is intended.

It will deter would-be purchasers from bidding, thereby allowing holdings to be sold for one quarter their value.

It will encourage hangers on about the Courts to make speculative purchases.

And last not least it will induce the judgment-debtors to be careless in the due payment of their debts.

T. M. GIBBON.

12th February, 1885.

Dissent.

I REGRET I cannot concur with many of the decisions arrived at by the majority of the Select Committee. It seems to me that we have failed to achieve some of the principal objects of the Bill, and that the modifications which the measure has undergone, whilst securing to the landlords substantial advantages, have left the raiyats as defenceless as before.

The Bill was introduced in Council with certain well-defined objects which were of a two-fold character, namely (1) to give reasonable security to the peasant in the occupation and enjoyment of his land; (2) to give reasonable facilities to the landlord for the settlement and recovery of his rent. In order to attain the first object, it was proposed to make the following changes in the existing system:—

(1) to extend to permanent cultivators, holding land in a particular village or estate, the right to hold that land on payment of a fair rent;

(2) to make occupancy-rights transferable;

(3) to introduce a fixed maximum limit for the enhancement of rents; and

(4) to provide some efficient guarantee to non-occupancy-raiyats against *arbitrary* eviction and *arbitrary* enhancement of rents. As regards the first object, the proposal, no doubt, has been maintained with some modification. But this has certainly not been the case with the others, and I must confess to a feeling of disappointment at the withdrawal of most of those provisions which were from time to time introduced to secure these objects.

The free transfer of occupancy-holdings was, if I may so call it, the keystone of the measure. The custom had grown up in various parts of Bengal and was gradually extending itself to the entire province. Excepting those places where the presence of a foreign element predominated and caused some degree of friction between landlords and raiyats, the tenants who enjoyed the right of free transfer were admittedly more prosperous and better able to withstand the periodical shocks of scarcities and famines. It was admitted that, during the years immediately preceding the introduction of the measure in Council, the evidence in favour of the extension of the right of transferability had accumulated considerably. It was accordingly proposed to give a statutory sanction to that right. With reference to Behar, however, a doubt was entertained by the Government of Bengal, and my own knowledge of the circumstances of that province induced me last session to bring forward a proposal to withdraw Behar from the operation of the provision. That proposal, however, was not approved of, and it was resolved to give the right to all occupancy-raiyats throughout Bengal and Behar. During the present session, the provision has been dropped entirely from the Bill. Whilst agreeing to the advisability of leaving to custom the right of free transfer in Behar, I consider that as regards Bengal it would have a mischievous tendency. In every place, even where the right has been freely exercised, such as the Presidency, Rajshahye, Dacca, and Chittagong Divisions, the custom will be disputed, with the result that a large portion of the consideration money will pass either into the hands of the landlords or their servants. It would have been far better to recognize transferability throughout Bengal Proper, subject, if necessary, to the payment by the raiyat of a graduated scale of fees upon the consideration money, than to have left it to custom, which I fear will henceforth be disputed in every instance, to the serious prejudice of the tenant in the exercise of his right. With the safeguards which the Bengal Government proposed to attach to the recognition of the right in Bengal Proper, no injury to the landholding interests need have been feared. I think the mode in which the question has been discussed and decided is likely to produce mischief. Had the question not been raised, this mischief might have been avoided.

2. From the very inception of the Bill, it was considered necessary to introduce a maximum limit on rents. In many parts of the province it was proved by the stern testimony of facts that the enhancement of rent beyond a certain limit implied starvation to the cultivators of the soil, and that any endeavour to exact rent beyond that limit ended in failure to the landlord or distress to the tenant. In the interests of the landholding classes themselves it was proposed to provide a check to the system of rack-renting which many of them were disposed to adopt. The East Landholders Association and the late Bábú Kristodás Pál both proposed a gross produce-limit—the former one-fifth as the highest limit of enhancement which the zamíndárs thought proper to demand, the latter one-fourth. The important question to determine was what proportion should the raiyat be left in enjoyment of after payment of his rent? If experience and the collective evidence of competent observers are of any account, it is clear that the raiyats in Bengal can hardly pay for rent more than one-fifth of the gross produce without trenching upon the bare means of subsistence. If in some places the *jamábandis* shew a higher rent, the question remains is the raiyat ever

able to discharge his liability? Among other evidence, that recently supplied by the Board of Revenue as the result of its experience of wards' estates furnishes a negative answer to this question. It certainly cannot be the interest of anybody to leave the raiyat a bare subsistence. Whatever the proportion it may have been considered desirable to adopt, a gross produce-limit appeared to me the most satisfactory and most feasible of all the proposals brought forward to prevent rack-renting. The adoption of this limit would have also enabled the legislature to give some degree of protection to the large body of non-occupancy and under-raiyats who are now practically left without any protection. The withdrawal of the fractional limit upon enhancements in Court is in my opinion likely to prove injurious to the raiyats.

3. I consider the ground of enhancement on the basis of "prevailing rates" as open to serious objection. It introduces, in the form it has now assumed in this Bill, an entirely novel principle into the law of Bengal. The law has hitherto not recognized enhancements up to the *average* of rates payable, and it seems to me that the recognition of such a principle is not only dangerous, but, without any correlative ground of reduction, unjust. It will end in screwing up rents to the factitious average of a large number of rates, over the correctness or reality of which no individual raiyat has any control, and that average will furnish the basis for a fresh increase until the highest possible rate is reached.

4. Enhancement on the ground of increase in the price of staple food-crops is to my mind economically indefensible. When the price of food-crops increases, the price of other necessary articles also increases. Is it fair or reasonable to constitute a rise in the price of staple food-crops as a ground of enhancement when a hundred other circumstances, like the increasing cost of production, increasing cost of the bare necessities of life, &c., tend to show that the raiyat of to-day in the majority of instances is not a whit better off than the raiyat of twenty years ago? Let us take for example an instance (which is not uncommon in Bengal), of a raiyat whose holding is fit for growing, say cotton, and whose cultivation, owing to a fall in the cotton-market, has diminished in value. As the Bill stands such a raiyat would, notwithstanding his contracted ability to pay enhanced rent, be still liable to enhancement should the price of food-grains have risen. In other words, although he gets less for his crop and has to pay more for his food, he is still liable to have his rents increased. I cannot help thinking that the Select Committee have failed to realize the full effects of this ground of enhancement, and I would strongly urge that the old ground of enhancement on the basis of net values should be reverted to.

5. The Bill provides no efficient safeguard against the ejectment of a non-occupancy raiyat to prevent the possibility of his acquiring an occupancy-right.

6. I am not able to understand the object of the factitious difference which has been created between under-raiyats holding under registered sub-leases, and under-raiyats holding verbally or under an unregistered lease. The system of sub-letting is interwoven with the agricultural economy of the country, and the Committee at a very early stage recognized the inexpediency of introducing any provision in the Bill interfering with it. Considerable protection has been given to planters and capitalists taking lands for purposes of indigo cultivation from the raiyats under registered sub-leases. No protection, however, is given to the mass of under-raiyats. It is said that these may secure to themselves the same rights by simply taking registered leases; but it must be remembered that the majority of the under-raiyats are poor to the verge of starvation, and that they are not in a position to demand registered leases.

7. I demur, also, to the provision embodied in the Bill regarding *ádhandi* tenures. This provision seems to me to be in direct contradiction to the views of the Secretary of State and the Government of India, that "shifting" should be put an end to. The *ádhandi* provisions recognize and legalize the eviction of a raiyat at the mere caprice of the landlord. I had no objection to the proposals of the Bengal Government, to allow land held on the *ádhandi* system to be a matter for contract; but I have strong objections to the *ádhandi* raiyat being left, as this Bill leaves him, without any practical protection whatsoever.

These are the main and essential points on which I differ from my colleagues; but there are various minor details with reference to which, also, I cannot agree with them.

8. On the whole I regret to think that a measure from which so much was expected should prove so inadequate in its general result. The guarantees to which the raiyats had laid claim, as well on constitutional grounds as on those of equity and expediency, have been either withheld or only partially conceded. Between contending claims the Bill does not in my opinion strike a just balance, and it seems to me that unless some further modifications are made in the direction which I have indicated, it will not answer the purpose of definitely setting at rest the disputes between landlord and tenant in Bengal.

AMÍR ALÍ.

MINUTE.

I signed the preliminary Report of the Select Committee last year, on the understanding that I postponed the expression of my opinion on certain questions until the submission of the final Report to Council. Some of the sections to which I then objected have, during the subsequent revision, been removed from the Bill, others have been modified, and I now confine my remarks to four principal points. I desire, however, at the same time to record in general terms my hesitation in regard to several other provisions in the Bill. For the Select Committee has been asked to deal with the entire relation of landlord and tenant in Bengal, without being furnished with any body of cross-examined evidence to guide its deliberations. Opinions and statements, often conflicting and sometimes contradictory, have been furnished to it in large numbers. But it has not had the means of ascertaining which of these opinions and statements would have borne the test of cross-examination, or how far their discrepancies might have been reconciled. Absence of such data is the more to be regretted in a measure affecting land-right in Bengal; for in Bengal almost alone among the Provinces of India, there is no central department of statistics, and until quite recently there was no agricultural bureau, which might in some measure have compensated for the evidence of witnesses heard in the Districts. But, while I regret the defective method of enquiry originally adopted, I acknowledge that, at the stage which the measure had reached when the Bill came before the Select Committee, the time for an effective local enquiry had gone past. The Committee heard the views of several gentlemen in Calcutta on two minor points, but no body of evidence has been collected in the Districts and subjected to cross-examination. The result has been to leave in my mind an extreme uncertainty in regard to several important classes of rights with which the Bill deals.

Coming to specific grounds I object, in the first place, to the application of one set of minute provisions for the regulation of rent, to two Provinces in which the relation of landlord and tenant is so widely dissimilar as in Bengal and Behar. [Section 1 (3).] The statements before the Committee show that in Behar, owing to over-population and to the consequent competition for land, the difficulty is to secure a sufficient share of the crop to the cultivator; while throughout large areas in Bengal the difficulty is for the landlord to realise his rent. Yet the fundamental differences between Bengal and Behar find no recognition in the Bill. The effect of this has been, in my opinion, to increase the difficulty of making effective provision for either Province. Thus in regard to perhaps the most important question dealt with in the Bill, namely, the restrictions to be placed on enhancement of rents, the Bengal Government declared that to limit rents to one-fifth of the gross-produce was a necessity for Behar, while the imposition of that limit was found indefensible for Bengal. The one-fifth limit has accordingly been dropped, and minor restrictions have been introduced. It seems doubtful to me whether some of these minor restrictions do not go further than is warranted by the facts in Bengal; and it is more than doubtful, considering the statements made on behalf of the Bengal Government, whether these restrictions will meet the necessities of Behar.

I object, in the second place, to the discouragement which the Bill places on the reclamation of waste lands by proprietors at their own expense. Important provisions in the Bill rest on considerations arising out of the pressure of the population on the soil, and on the necessity of protecting the cultivator against the monopoly in land which is thus conferred on the landlord. The most direct remedy for this state of things is to increase the area available for cultivation. Yet the Bill not only gives no new inducement to landholders to reclaim wastes, but places discouragements, which did not exist under the previous law, upon their doing so. As regards lands brought under cultivation by means of reclamation leases, the landlord will be in a rather worse position than before; for the occupancy-right will now commence to accrue to the tenants during the currency of such leases, and it may be enforced immediately on their expiry. As regards lands brought under cultivation by the landlord himself, by means of hired labour, he is in a much worse position than before. Henceforth the landlord who cuts down heavy jungle, or digs tanks, or drains swamps at a large outlay, by means of his own servants, will, under the provisions of the Bill, begin to lose the occupancy-right in the reclaimed land as soon as he lets it out to tenants. If the landlord lets the reclaimed fields to a settled raiyat of the village, the tenant acquires the occupancy-right the moment he enters on the land: if the landlord lets the reclaimed fields to any other raiyat, the title to occupancy-rights immediately begins to accrue. In no case will the landlord be permitted, by special contract in his lease, to bar the growth of occupancy-rights in land which he has reclaimed by his own servants at his own expense. Considering the pressure of the people on the cultivated soil, and the existence of large un-reclaimed tracts within a few days' walk of centres of congested population, I think it impolitic to place any new discouragements on efforts to add to the cultivated land. Considering that the Bill, in order to deal with the evils of over-population, restricts the former rights of the landholders, I think that such discouragements are not only impolitic but unjust. I purpose, therefore, to move amendments in Council, which will have the effect of protecting a landlord who reclaims at his own expense *bonâ fide* waste lands, against the

growth of occupancy-rights in those lands during a reasonable period to recoup his outlay, say for thirty years.

In the third place, I obje t to certain of the provisions for the enhancement and reduction of rents on the ground of a rise in prices [section 39]. The Bill substitutes for an old and a scarcely workable ground of enhancement, namely, a rise in the value of the produce, a much more simple ground, namely, a rise in the prices of staple food-crops. The latter contention would in any case be more easily susceptible of proof. But the Bill further simplifies the burden of proof, by directing that the Courts shall be guided by certain lists of prices to be published in the official Gazette. These lists are to be of two kinds; one set of lists are to record current prices in the future, the other set refer to prices in the past. A new and sharp weapon of enhancement is thus placed in the hands of the landlord; but, subject to conditions on its application imposed by the Bill in favour of the tenants, I believe it to be a fair ground of enhancement. The weapon is two-edged; it cuts against the tenant as a means of enhancement if prices have gone up, and against the landlord as a ground for the reduction of rent if prices have gone down. It is obvious, however, that as the Bill entrusts the Local Government with the duty of supplying the evidence, it should take reasonable guarantees that the evidence thus supplied shall be good evidence. The draft Bill of last year provided that all the price lists officially published, should be conclusive evidence. The Bill as now finally settled directs that the Courts shall presume that the facts stated in the lists are correct unless and until it is proved that they are incorrect; thus giving the value of presumptive evidence to both the sets of lists.

I believe that the lists to be prepared for current prices in the future, under the safeguards provided by the Bill, will merit this degree of credibility: but that the lists, purporting to record prices in the past, do not. This latter class of lists will have to be compiled, *ex post facto*, for a period running back ten or fifteen years, from certain price-lists which were collected at a time when adequate safeguards were not taken to secure their accuracy, and when the effective safeguards now provided by the Bill for future price-lists were not thought of. At the period of their collection, moreover, it was never contemplated to give to them the value of conclusive or presumptive evidence in the Courts. I have examined some of the old lists. I do not think that they afford a safe basis for a recompilation which should be accepted by the Courts either as conclusive or presumptive evidence of prices in the past. They are valuable concurrent evidence, taken together with the evidence to be derived from the business books of grain-merchants, za~índárs, and dealers in export produce. I do not think that lists to be mainly compiled from them should now have a greater weight than the original lists would have had under the Evidence Act. I propose, therefore, to move an amendment which will have the effect of leaving the value of presumptive evidence to the lists prepared for current prices in future, but withdrawing that value from the lists to be compiled for prices in the past.

In the fourth place, while not dissenting from the powers granted by section 112 to the Local Government, in certain exceptional circumstances, to reduce rents, I wish to place on record the hesitation with which I have agreed to that provision. The exceptional circumstances contemplated are when the Government has to intervene between landlord and tenant, "in the interests of public order or of the local welfare." On the one hand, the experience of the past, and the statements which have been made in regard to the future, seem to render it expedient that this power should, under due safeguards, be accorded to the Local Government. The Bill, in requiring that the previous sanction of the Governor General in Council must be obtained, provides due safeguards. On the other hand, I do not think that a general disruption of contracts between landlord and tenant, such as is involved by a reduction of rents on a large scale, should be effected by any authority of a less deliberative character than the Legislature itself. If, therefore, it ever becomes necessary to apply this clause to a considerable area, I hope that the process will be conducted under, or receive effect from, an express Act. It is in this hope that I have agreed to the provision in the present Bill.

I have thought it my duty to place on record objections to specific provisions of the Bill, and to mention in general terms my uncertainty in regard to several important classes of rights with which it deals. I ought, therefore, to state clearly that I believe the Bill, taken as a whole, makes substantial improvements on the existing law, and that, where it alters that law, the changes are, with certain exceptions, expedient and just.

W. W. HUNTER.

Dissent.

I DISSENT from this Report, because I am not satisfied that the Bill, as amended by the Select Committee, affords that effectual protection to the raiyat which the measure, as introduced into the Council, was intended to give. What the nature of that protection was, and on what grounds it was thought necessary, can readily be learnt from the Statement of Objects and Reasons, and from the speech delivered in Council on the 2nd March, 1883, by the Hon'ble Member who introduced the Bill. It was the intention of the Bill to secure to the occupancy-raiyat fixity of tenure, fair rent and free sale. The Bill accordingly declared, *first*, that every settled raiyat should have a right of occupancy throughout the village or estate in which he held land at the date of the introduction of the Bill; *secondly*, that his rent should never exceed one-fifth of the value of the gross produce of the land in staple crops; *thirdly*, that he might transfer his holding at his pleasure, subject to a right of pre-emption on the part of the landlord, and that the landlord's purchase of the holding should not extinguish the occupancy-right, but that the right should revive as soon as the land was let to another tenant. The interests of the non-occupancy-raiyat were not less carefully guarded. "Tenants of this class", said the Hon'ble Member who introduced the Bill, "should not be exposed to arbitrary rack-renting and eviction at the hands of their landlords, and the acquisition by them of the status of settled raiyats should be facilitated in every possible way." The Hon'ble Member quoted with approval a remark made by Sir Ashley Eden, that "no raiyat should be evicted from his fields on any ground save persistent failure to pay a fair and reasonable rent". In accordance with these principles, the Bill prescribed a maximum limit of rent for the non-occupancy-raiyat; it did not allow him to be ejected on the ground that the term of his lease had expired; and it provided that, if he were ejected for refusing to agree to an enhancement demanded by the landlord, he should be entitled to receive compensation for disturbance.

Such was the Bill which was introduced into the Council, and which was referred to the Select Committee. It was drawn with a full recognition of the character and the gravity of the evils which it was designed to remedy. "What we hope for" (said the Hon'ble Member who introduced the Bill) "is, first, that a stop may be put to the vigorous efforts which are at present being made by landlords in some parts of the country to withdraw land from the operation of the occupancy-right by preventing the natural growth of a fresh occupancy-right in the place of an old right which has determined; and secondly, that where occupancy-rights do, as a matter of fact, exist, the proof of their existence may be a matter of less difficulty than it is at present to the ignorant and helpless raiyat". In speaking of the necessity for legislation, and of the kind of legislation required, the Hon'ble Member re-produced a striking passage from the Report of the Famine Commission. "We have received" (the Famine Commissioners wrote) "a large amount of evidence, remarkable in its weight and unanimity, to the effect that in the Bengal Province the relations of landlord and tenant are in a specially unsatisfactory condition. We feel no doubt that the condition of the rent-law and the way in which it is administered in Bengal are a very grave hindrance to its agricultural prosperity, and that large portions of the agricultural population remain, owing mainly to this cause, at all times dangerously near to actual destitution, and unable to resist the additional strain of famine. We can feel no doubt that in all the provinces of Northern India, and particularly in Bengal, it is the duty of the Government to make the provisions of the law more effectual for the protection of the cultivators' rights. * * * * It is only under such tenures as convey permanency of holding, protection from arbitrary enhancement of rent and security for improvements, that we can expect to see property accumulated, credit grow up, and improvements effected in the system of cultivation. There could be no greater misfortune to the country than that the numbers of the occupancy-class should decrease, and that such tenants should be merged in the crowd of rack-rented tenants-at-will, who, owning no permanent connection with the land, have no incentive to thrift or to improvement. It is desirable for all parties that measures should be framed to secure the consolidation of occupancy-rights, the enlargement of the numbers of those who hold under secure tenures, and the widening the limits of that security, together with the protection of the tenant-at-will in his just rights, and the strengthening of his position by any measure that may seem wise and equitable."

These, I repeat, were the principles upon which the Bill was based, and these objects would have been effectually secured by the Bill as originally introduced into Council. In the amended Bill, fixity of tenure is weakened by the limitation of the definition of a settled raiyat to the village alone; fair rent is deprived of the safeguard (the only ultimate safeguard) of a maximum limit beyond which rent can never be enhanced; and free sale has disappeared altogether from the Bill, or survives only in a section which saves customary rights. The non-occupancy-raiyat has fared even worse, at the hands of the Select Committee, than his occupancy brother. The gross produce limit of his rent is struck out; he is declared liable

to ejectment on the ground that the term of his lease has expired; if he refuses to agree to any enhancement demanded of him, he cannot claim a judicial rent for a longer period than five years; and he may be ejected at any time before he has acquired a right of occupancy without obtaining any compensation for disturbance.

It will possibly be said that these alterations, sweeping as they may seem to be, are counterbalanced by other changes which have been made in the Bill, and that, when the account on both sides is fairly summed up, it will be seen that the objects of the original measure have substantially been attained. Let us consider how far this is the case as regards each of the two great classes of raiyats, and, first, as regards the occupancy-raiyat.

It must be admitted that transferability, or the right of free sale, is not an essential provision of the Bill. I believe that (in Bengal at any rate) it might usefully and safely have been conceded; but there were arguments in favour of a different conclusion, and it was open to the Select Committee to decide that transferability would not have the effect of either strengthening or extending the occupancy-right. I do not therefore desire to lay any stress on the abandonment of this provision.

With regard to fixity of tenure, the elimination of "the estate" from the definition of the settled raiyat is, I think, much to be regretted. If no middle course could be found, the Committee had to decide between a definition which might, in a few exceptional cases, entail a slight hardship on the landlord, and a definition which could easily be worked so as to produce, in a multitude of cases, a grievous wrong to the tenant. On this point the decision of the Committee was, in my opinion, a lamentable mistake. At the same time I admit that, as regards fixity of tenure, the position of the occupancy-raiyat is somewhat stronger under the amended Bill than under the present law, and that this object of the Bill has been partially, though still imperfectly, attained.

Fixity of tenure, however, without fair rent is worse than useless, and in the matter of fair rent the Bill signally fails to afford the occupancy-raiyat reasonable protection. He is protected, under the existing law, by the fact that the enhancement provisions of the Act now in force have proved to be unworkable. Such a condition of things is a public scandal, and the Select Committee rightly resolved that just claims to enhancement should no longer be baffled by the uncertain wording or the complicated conditions of the law. But the Committee seem to have overlooked the danger of enlarging the facilities for the use of the enhancement sections without also taking precautions to guard against the abuse of them. The Bill puts enormous powers of enhancement into the hands of the landlords. The sections relating to enhancement on the ground of the prevailing rate have been re-cast in a form which will practically allow the landlord to raise the rent of every raiyat in the village to the highest rate which he can persuade or compel any one to pay. In suing for enhancement on the ground of a rise in prices, the landlord will find the evidence, which it has hitherto been impossible for him to adduce, provided by Government ready to his hands. He will have nothing to do but to lay before the Court the official price-lists, and a decree in his favour will follow as a matter of course.

The feeble palliatives which the Bill provides are impotent to restrain the evils which the working of the enhancement sections is calculated to produce. It is declared that no enhancement shall be decreed in excess of what is fair and equitable; that the rent of a raiyat shall not be enhanced at intervals of less than 15 years; and that, in extreme cases, the Government of India may interpose, and may depute an officer, not, as usual, to enhance rents, but to reduce them. The first of these provisions may occasionally be of use in tempering the rigour of the law, but it is of too vague and indeterminate a character to afford any adequate protection. The second will make the pauperizing process more gradual, but not less certain or complete. And what shall we say of the third? Where is the wisdom of enacting a law the natural operation of which may produce a state of things which will require the law to be not merely suspended, but reversed? But in truth what is most to be feared is not such outrageous oppression as would call for the interposition of Government under this special provision of the Bill. What is most to be feared is that the gradual and steady operation of the enhancement sections will be a p rmanent bar to all improvement in the condition of the occupancy-raiyats. They will have no inducement to raise larger crops or to cultivate more valuable products, for they would be toiling for the benefit, not of themselves, but of their landlords. The machinery of this Bill they can neither resist nor evade.

These evil consequences would have been avoided, if the Select Committee had accepted two of the recommendations of the Government of Bengal. That Government desired, first, to restrict enhancement on the ground of the prevailing rate to those individual cases which it was originally intended to meet, and secondly, to prescribe an absolute limit beyond which no claims to enhancement should be allowed. The Government of Bengal saw that, if the landlord's demand were restricted to one-fifth of the gross produce in staple crops, rack-renting would be effectually stopped, the cultivation of the more valuable crops would be encouraged, and the agricultural advance of the country would be ensured. Unhappily, these views were not accepted by the majority of the Select Committee, and the amended Bill leaves the occupancy-raiyat without any adequate security in the matter of fair rent.

With respect to the non-occupancy-raiyat, the original Bill was designed to protect him against unreasonable exactions, and to facilitate his acquisition of the right of occupancy. I have shown what stress was laid on these objects, and especially on the second of these objects, by the Famine Commissioners and by the Hon'ble Member who introduced the Bill. It is therefore somewhat remarkable that the amended Bill leaves the non-occupancy-raiyat entirely at the mercy of his landlord as regards his rent. When first admitted to occupation he must pay such rent as may be agreed upon between himself and his landlord. It is true that, if he is afterwards called upon to agree to an enhancement, he may demand a judicial rent for a term of five years. But this provision will be inoperative, for the raiyat will be aware that, unless he comes to terms with his landlord in the matter of rent, the landlord will not formally demand an enhancement, but will sue to have him ejected. Those who know the peasantry of Bengal know that a raiyat will agree to pay any rent rather than face the alternative of ejectment from his holding. The provisions of Chapter VI of the Bill will therefore enable the landlord to exact from the non-occupancy-raiyat the highest rent which the land can possibly bear, a rent which will leave the tenant nothing more than a bare subsistence: and the demand of enhancement may be repeated year after year.

It is remarkable, as I have observed, that the amended Bill affords the non-occupancy-raiyat no protection as regards his rent. But it is still more remarkable that it does nothing to facilitate his acquisition of the right of occupancy. It provides, it is true, that he shall not contract himself out of the power to acquire the right. But this stipulation is useless so long as the Bill affords a simple and effectual means of ensuring that the right shall never accrue. The right can be acquired only by 12 years' continuous occupation of village-land. The Bill leaves it in the power of the landlord to rack-rent the non-occupancy-raiyat during eleven years, to eject him in the twelfth, and then to re-admit him and begin the process again. In the populous parts of the country, the raiyat, who cannot live without the land, will have no resource but to submit.

Can it be alleged that such provisions as these redeem the pledges made when the Bill was introduced, or place the non-occupancy-raiyat in the position which he may equitably claim to hold? What was his status under the Regulations of 1793—the contract to which the landlords and their advocates so continually appeal? He was entitled (as Mr. Justice O'Kinealy has shown) to hold at the customary rate, and was not liable to eviction, except for non-payment of rent. What is his status under this Bill? He is a mere tenant-at-will, with absolutely no rights beyond those which his landlord may be pleased to allow him. It may not be possible to revert at the present day to the conditions of 1793, but at least it is reasonable to ask that the legislation of 1885 shall not place the non-occupancy-raiyat in a worse position than he held in 1859.

I cannot admit that there is any force in the plea that the landlords, as a body, are not likely to strain to the utmost the powers given them by the Bill. The legislature is not justified in putting one class of men at the mercy of another class, on the chance that the latter will use their irresponsible power with moderation. And I must add that I feel no assurance that, as regards the accrual of the occupancy-right, these powers will be moderately used. I have already quoted the words in which the Hon'ble Member who introduced the Bill referred to "the vigorous efforts now being made by landlords to prevent the natural growth of occupancy-rights". There is overwhelming evidence before the Council to show that this feeling among the landlord class is widely spread and deeply seated. I apprehend that landlords will not fail to use largely the opportunities which this Bill will give them. They will not merely prevent the growth of the right over lands now held by non-occupancy-raiyats, but, as occupancy-holdings from time to time fall into their hands by death, abandonment or surrender, they will treat the new tenants of these holdings in the same manner. "There could be no greater misfortune to the country", said the Famine Commissioners, in a passage which I have already quoted, "than that the numbers of the occupancy-class should decrease". The provisions of the amended Bill seem to me to threaten the country with this misfortune.

For these reasons I am unable to assent to the Report, or to regard the Bill, in the form which it has now assumed, as an adequate and final settlement of the questions raised in this great controversy. If the Bill is to be accepted, it must, I think, be accepted only as an instalment of the legislation necessary to place the relations of landlord and tenant in these Provinces on a secure and satisfactory basis.

H. J. REYNOLDS.

Minute of Dissent.

The present rent law has been in operation for the last 25 years. One would have thought that legislation which aimed at an amendment of that law would be directed to such defects and objectionable provisions in it as judicial administration during this long period had brought to prominent notice. But this is far from the actual state of things. Upon one point, indeed, there was a consensus of opinion. The Government and the zamíndárs alike were agreed that the present procedure for the recovery of rent was lamentably defective. So acutely did the Government feel the difficulty that they caused special enactments to be passed by the Local Council for securing for themselves a summary procedure for the recovery and settlement of rent in their own estates, while the zamíndárs were left to follow the procedure which Government in their own case were compelled to abandon. When, again, the obligation of collecting the road and public works cesses was imposed upon the landholders, distinct promises were made to them that they should obtain statutory facilities for the recovery of rent by suit in Court. And when two Bills were introduced for the purpose in the Local Council (and neither of them was carried through) it was observed by the President from his place in the Local Council that "only the procedure sections (those for the more effective realisation of rents) should be proceeded with." So far, therefore, the very facts, which point to legislative action clearly show that there was no necessity for a substantive amendment of the Rent Law. There was besides the unwarrantable Proclamation issued by Sir George Campbell in 1872, setting forth that "it is perfectly lawful to unite in a peaceable manner to resist any excessive demands of the zamíndárs; but it is not lawful to unite to use violence and intimidation." For, the Pubna disturbances which occurred about this time, and the significant declaration of the raiyats that they had become the direct tenants of Her Majesty showed not that they were rising in arms against a Government which they meant to condemn as unmindful of their requirements, but that they considered themselves powerful for the assistance they had secured and that they were possessed of the upper hand over their landlords to whom they were liable for arrears of rent. In fact, before the Report and draft Bill of the Rent Commission were published in July 1880, no complaint was made on behalf of the raiyats about the harsh operation of any of the sections of the law and no suggestion for a revision of its fundamental principles emanated from any judicial officer. On the contrary, Sir Barnes Peacock had expressed as his decided opinion that the occupancy section was operating unjustly against the legitimate interests of the landholders and that it should be abolished. And it would be extraordinary to treat Sir Barnes Peacock's recommendation or the Government promise of a summary procedure for the recovery of rent as evidence of necessity or justification of a Bill like the one before Council which, in our opinion, makes serious inroads upon the ancient rights and privileges of the landholders. The draft Bill of the Rent Commission was based almost wholly upon theory and speculation, and its many innovations have only been shown up but never proved justifiable in the different stages through which it has since passed. In the meetings of the Select Committee, on which we had the honor to sit, the authority of the Rent Commission was invoked in support of several of the provisions of the revised Bill; in some cases the opinions of the Bengal Government contained in their letter of the 15th of September last was appealed to; in some the opinions submitted by public officers on the requisition of the Bengal Government were pressed into service; and in others again, it was advanced that it would be unwise to disturb the resolutions passed by the Committee last year. Authority ranging under one or other of these heads was no doubt forthcoming in support of the different sections of the revised Bill, but we do not see how this could be convincing to the Legislature in the absence of evidence duly tested by cross-examination by the members of the Select Committee. The advantages of cross-examination are sufficiently well-known and it would certainly be no disrespect to the most talented person or the best qualified expert if a man of inferior ability sought from his place in the Supreme Legislative Council of the country to satisfy himself by such orderly enquiries as happened to suggest themselves to him. And until such opportunity is offered to the most junior member of the Council, its deliberations must remain very unsatisfactory to itself and to the outside public. The private opinions of even judicial officers, when not confined to experiences of the actual operation of particular sections of the law, do not possess much value, and it would be dangerous to introduce new provisions in a difficult branch of the law on the basis of untested opinions of subordinate officers. When a learned judge of the High Court reads the Regulations to mean that "no lease was valid till it had been submitted to, and approved by, the Revenue Authorities;" and when another learned Judge of the High Court adduces the passage in Regulation II of 1793, *viz.*, "the property in the soil was never before formally declared to be vested in the landholders" as "conclusive on the point that the soil was not the property of the zamíndárs," we believe no apology is needed for our not placing implicit faith in the extra-judicial opinions of distinguished officers of Government. As regards the condition of the people and the necessity of radical changes in the law, in other words, the policy of the measure, if high officers of State, judicial and executive, may speak with any authority, it is no small accession of strength to those who are opposed to the main principles of the Bill to be able to say that a majority of Divisional Commissioners and not a few District Judges, share in their views.

Justice Cunningham's Minute, paragraph 16.

Justice O'Kinealy's Minute, paragraph 4.

But these opinions and the opinions of experienced Subordinate Judges on the operation of the different provisions of the present law have in many cases been undervalued by the majority of the Select Committee and consideration shown for the opinions of much less experienced officers upon a perfectly unsupportable estimate of personal weight. We shall have occasion further on to refer to some of these opinions. As regards the general features of the Bill it appears to us that vested rights of landholders have been interfered with without the sanction either of juridical principles or the formally declared authority of the Executive Council; that rights have been created in favor of one class of subjects and at the uncompensated cost of another class which, to say the least, are of dubious benefit to the country at large, and looking to the large question of growth of population and famine difficulties the changes are simply calculated to augment, rather than relieve, the pressure on Government. The changes proposed to be introduced by the Bill will have the further effect of making, in opposition to well-established principles of Government the judicial administration subordinate to the Executive authorities in many respects. And lastly, the changes alluded to are sure to bring about such an extent of litigation and uncertainty in dealings out of Court, that we shudder to think of the subject barely as inhabitants of the country and apart from our interests as landholders and from our feelings as the representatives of the landholders of Bengal and Behar. By a consensus of opinion, official and non-official, the result of the operation of the present law has been to place the whole body of raiyats in a condition of prosperity superior to what they previously enjoyed, and to what is enjoyed by the corresponding classes of people in any the smallest corner of this immense continent of British India. There would be no objection to that condition being made still better if it could be done without interfering with the welfare of the other classes. But we strongly believe that far from benefiting the tenantry the measure, in its present shape, if put in operation, will effect their ruin as a class, or in any case of the honester and poorer portion of them, by endless and harassing litigation. The very discussion of the measure upon the lines disclosed in the Bill is fraught with dangerous consequences upon the rural economy of the country and the firm social relations between class and class of the subject community, and between all classes and the Government at the head. We shall now proceed to examine some of the objectionable provisions of the Bill in detail.

Section 5. (5)—The rule that whenever the area of a holding exceeds one hundred bíghás, the raiyat shall be presumed to be a tenure-holder, is arbitrary and opposed to fact. There are many districts in which holdings, each exceeding a hundred bíghás, are not uncommon, but the tenants thereof are raiyats all the same. As no written engagements are usually exchanged, landholders will find great difficulty in rebutting the presumption which this clause will raise, while on the other hand the divisions and sub-divisions created by Hindu and Muhammadan rules of succession will ere long present the spectacle of tenures comprising of only 20 or 30 bíghás of land cultivated by the holders thereof.

Sections 8 and 36.—The power given to the Court to direct in the case both of tenure-holders and raiyats, that the enhancement of rent shall be gradual, is novel. As the enhanced rent represents what the landlord is entitled to get, and what the Court considers to be fair and equitable under the circumstances of the case, the provision in question is wholly indefensible. Lord Bramwell truly observed with reference to this provision.—"Now what consideration would influence the Court; I do not know whether if the tenant had got half a dozen children it would be a hardship upon him to have his rent suddenly enhanced I do not know. We do not see how that can be taken into account, indeed, what could be taken into account really under such a clause as that.

Sections 9 and 37.—The change of the minimum period from 10 to 15 years for which an enhanced rent should obtain currency, is equally arbitrary. Both in the draft Bill of the Rent Commission and the Bill introduced into the Council, the period was 10 years. Although landholders are lawfully entitled to claim enhancement whenever there is a rise in the value of produce and consequent depreciation of the exchange value of money, the limitation of 10 years would be an effectual check to oppressive repetitions of claims for enhancement, but considering the strides the country is daily making in material progress the extension of the period is wholly unwarrantable.

Section 18.—The provision to extend to a raiyat holding at a rent or rate of rent fixed in perpetuity the same rights of transfer and succession that belong to a tenure-holder is wrong in principle. The same considerations which have induced the committee to expunge the sections regarding free sale of occupancy-rights hold good in the case of these raiyats as forcibly as in the case of other occupancy-raiyats. The landholder's objections to a free sale no less than economic considerations in the interests of the raiyats do not lose a particle of their force, whether the raiyat is protected from enhancement or he is liable to pay a fair and equitable rent. The practical operation of the section would, moreover, be productive of the greatest confusion. Every raiyat will claim to hold at a rent or rate of rent fixed in perpetuity, as by so doing he would not only secure to himself a right of free sale, but also protect himself from the conclusion that his rent is liable to enhancement. It would be suicidal on his part to behave himself otherwise than as a raiyat contemplated by this section and thus without any struggle with his landlord to confess himself a raiyat whose rent is liable to enhancement. But what is the Registering Officer, the Court and the Collector to do when a raiyat applies under Chapter III for the registration of a transfer of his holding? Is the Registering Officer or the Collector to enquire and decide in every such case whether the holding is protected from enhancement, or is he to exercise an arbitrary discretion in the matter? Again, is the section to apply to a

raiyat who holds at a rent or rate of rent fixed in perpetuity, but whose rent has nevertheless been enhanced by reason of improvements made by his landlord or by reason of his having been found in possession of more land than what he pays rent for? The difficulty would, to a certain extent, be remedied if it were provided, that the provisions of Chapter III should be made applicable only to those raiyats whose rents are protected from enhancement by a registered lease or judicially declared title.

Section 20 (5).—This sub-section provides that for one year after a man has ceased to hold any land as a raiya in a village he shall continue to be a settled raiyat in that village. This is wholly anomalous. A man cannot have ceased to be a raiyat and still continue to be a raiyat at one and the same time. The provision contained in Section 87 in respect of apparent and not actual abandonment would be a sufficient protection to the raiyat in cases contemplated by this sub-section which involves a contradiction in terms.

Section 20, Sub-section 7.—The rule of presumption created by this sub-section is a downright perversion of the law of evidence. Nothing is more easy for a raiyat who has held land for 12 years than to prove his possession by the production of his rent-receipts. It is not altogether an easy matter for the landholder to prove the negative. Even supposing that there has been no change of hands in the proprietary title, a landholder would be unable to prove his papers if within 12 years there have been changes, as there frequently are, by deaths, dismissal and otherwise, in his collecting agency. The difficulty would be unsurmountable in the case of auction-purchasers who would have no means whatever at their disposal for rebutting the presumption.

Section 21.—The provision contained in sub-section 1, to the effect that a settled raiyat shall have a right of occupancy in all land for the time being held by him cannot be supported on any considerations which justify the accrual of a right of occupancy. It is no reason that because a man has a right of occupancy in a certain plot of land that the right should extend by possession for a single day to every plot of land that might be let to him. This is directly opposed to the Despatch of the Secretary of State. It is, moreover, a provision which will act injuriously on the settled raiyats themselves. They will hardly get new lands for cultivation which landholders will take care to let to non-occupancy raiyats and strangers with a view to prevent the accrual of a right of occupancy.

Section 21 (2).—The effect of the operation of sub-section (2) would be to give a raiyat a right of occupancy in land which he has held "at any time between the 2nd day of March, 1883, and the commencement of this Act," although such land might have passed to the possession of the landholder or another raiyat by abandonment, surrender or transfer at some time within that period. Nothing could be a more fruitful source of litigation.

Section 22, Sub-section 1.—This sub-section introduces the doctrine of merger in a matter relating to landlord and tenant not for the purpose of preventing in the spirit of the Ruling reported in 10 Indian Law Reports, Calcutta 45, the acquisition of a right within a superior right, but for the purpose of merging an existing right in the superior right. For reasons explained by Sir Barnes Peacock in a case reported in 10 W. R. 15, this is quite opposed to the system of land-tenures and the condition of the country. The provision is the more objectionable as it saves the right of third parties in the land. The landholder would, therefore, get the land which comes to his possession by purchase, ejectment, abandonment or surrender subject to all the encumbrances created by the out-going tenant. Provisions have been made, it is true, in subsequent sections for defining what would be deemed to be valid encumbrances in different cases, but the language of this sub-section is absolute.

Section 25.—As the provision for a free-sale of occupancy-holdings has been abandoned, this section should provide for ejectment for non-payment of rent. A sale of the holding at the instance of the landholder in execution of a decree for rent would, in every case, heap upon the raiyat additional costs which the sale proceeds might not cover and would thus entail loss both upon the landholder and the raiyat. Ejectment would be a simple and effective remedy to the landholder, while the raiyat would always be able to prevent it whenever his holding is worth more than the amount of the decree.

Section 29 (1).—It might well be taken as an established fact that the price of produce has quadrupled since 1793, and at least doubled within the last 30 years. The productiveness of land has also increased immensely. The restriction which this section imposes upon enhancement by contract to 2 annas in the rupee is therefore most arbitrary. The rule involves a serious infringement of the rights of landholders. The right which the Government of India, when introducing the Bill, assumed it possessed of determining the rates of rent payable by raiyats to their landlord has, I venture to think, been found to be non-existent. A close examination of it will show it to be wholly unfounded. The question, it is well known, engaged the attention of a Select Committee of the House of Commons in 1832, and the conclusion to which they came after a searching enquiry can hardly be ignored at the present moment. They observed—"unless the Government should either, by public or private purchase acquire the zamindáry tenure, it would under the existing Regulations be deemed a breach of faith, without the consent of the zamindárs to intertere directly between the zamindár and the raiyat for the purpose of fixing the amount of land tax demandable from the latter under the settlemet of 1792-93." The proposed restriction is, however, altogether uncalled for by the circumstances of the country. No evidence whatever has been adduced to show that the raiyats in any parts of these Provinces are rackrented; all the evidence on the contrary goes to show that landholders have been extremely moderate and forbearing in the matter of settlement of rent with their raiyats. The ratio which rent bore to the value of annual produce at the

time of the Permanent Settlement varied according to Sir Jhon Shore from $\frac{1}{4}$ to $\frac{2}{3}$ths, and although the landholders were clearly entitled to get from time to time such enhanced rents as represented the changed value of money according to that ratio, it is an undisputed fact that the ratio which rent bears to the annual value of produce at the present day ranges in different parts of these Provinces from $\frac{1}{10}$ to $\frac{2}{3}$ths. Apart therefore from the question of legal rights the restriction in question is a great injustice to the landholders. The effect of the rule on the economic condition of the country would be an unmixed evil. The experience of every country has confirmed Arthur Young's observation that low rents always act as a damper upon industry and ultimately tells seriously upon the condition of agriculture and the prosperity of the cultivating class. The restriction in question will no doubt be felt by the raiyats as a benefit for a few years but ere long the profits of the holdings will give rise to a large class of under-raiyats, increase sub-infeudation to an alarming extent, and thus make a definite area of land feed two, perhaps, three families of raiyats in the place of the one that it is now feeding. In these Provinces where, according to the figures given in Dr. Hunter's Statistical Accounts, more than one-fourth of the average cultivable area is still uncultivated, not one of the least deplorable consequences of such a state of things would be to check the extension of cultivation and the progress of emigration. The question presents another aspect. Would this legislative embargo effectively control the law of demand and supply? Can the legislature force the principles of political economy to bow to its dicta? If a raiyat and his landlord agree between themselves as to the extent to which the rent should be enhanced, ways and means would not be wanting to give their agreement the form of a binding contract. After the terms have been agreed upon the landholder may sue the raiyat for enhancement at a certain figure and the raiyat may confess judgment in Court, or the raiyat may give the zamindár's as *salami* the capitalized value of the increase in excess of the enhancement allowed by law. The parties may have recourse to other shifts and devices to defeat the law. But perhaps the history of the provision is its strongest condemnation. The draft Bill (section 71) of the Rent Commission provided that there should be no limit to enhancement by contract. That provision was maintained in the draft Bill (section 63) of the Bengal Government, and also in the draft Bill (section 63) which was sent up to the Secretary of State in Council. It was the Bill which was sent up to the Secretary of State in Council. It was the Bill which was introduced in Council in March 1883, which for the first time provided (section 59 (2) that the increased rent should not exceed 6 annas in the rupee. The Select Committee in the course of deliberations last year reduced the limit to 4 annas in the rupee (section 41). At a meeting of the Select Committee, held on the 8th ultimo, a motion was made on the part of the Bengal Government to reduce the maximum limit to 2 annas in the rupee, but it was not supported by a single member, and it was therefore not carried. The motion was renewed on a subsequent date in connection with the question of a maximum limit to enhancement by suit in Court and carried by a majority. It should be further observed that the extension of the minimum time from 10 to 15 years during which the enhanced rent should obtain currency, was for the first time made by the Select Committee last year; the draft Bill of the Rent Commission, the draft Bill of the Bengal Government, the draft Bill of the Government of India, and also the Bill which was introduced in Council in 1883, all fixed the minimum period at 10 years. The objections to this limit which we have mentioned with reference to tenures apply with double force in the case of raiyati holdings.

Section 29 (2).—This sub-section contemplates an exercise of powers by the registering officer which is likely to do the raiyat more harm than good. Registering officers are not expected to exercise judicial powers, and yet in the face of his opinion under this sub-section, it would be difficult for a raiyat to prove in the Civil Court that he was not at the time in a sound state of mind, or that he was not competent by reason of his minority or other disability to enter into the contract.

Section 30 (b).—The alterations made by this section in the grounds on which a suit for enhancement of rent may be instituted would deprive landholders of enhancement which is justly due and at the same time introduce unnecessary complications in the law to the injury both of the landholder and of the raiyat. There will be no enhancement on the ground of a rise in price unless the rise is in respect of the price of the staple food-crops. By section 39 (7) the local Government has to determine what shall be deemed to be staple food-crops in these provinces, and it appears from a letter written by the Revenue Secretary to the Government of Bengal to the Secretary of the British Indian Association, dated the 23rd February 1884, that "the Lieutenant-Governor would probably declare to be staples the two food-grain crops (apparently rice and wheat) which appear * * to be most largely produced in each district." The effect of this alteration would be very harmful. The landholder would get no enhancement for a large rise in the price of jute, sugarcane, or potato, if there has been no rise in the price of rice; while on the other hand a raiyat cultivating simply jute, sugarcane, potatoes or pulses would have to pay not only enhanced rent to his landlord but also to spend more money for his living if the price of rice has risen although the price of these other crops has fallen or remained stationary. It is easy to see that in some cases the operation of this section would be disastrous to the raiyats.

Section 30 (c & d).—The alteration made in the ground of enhancement relating to increase of the productive powers of the land is equally objectionable. These clauses provide for enhancement when the increase is due either to improvements effected by the landlord, or by fluvial action; but there are other causes of improvement for which the landlord is undoubt-

edly entitled to get enhancement of rent. Where, for instance, a change in the course of a river, a new railway, a new public road or a new Government embankment frees land from periodical inundations or from frequent trespasses by cattle or wild animals, any rule which deprives the landlord of his share of the benefit of the improvement militates against the very principle on which enhancement on the ground of improvement of the land is based. The alteration in this ground of enhancement has necessitated the introduction of a number of sections about landlords' improvements, and enquiries into the same and registration thereof which might well have been omitted.

Section 31 (a).—There is no justification for the rule contained in this clause to the effect that a landholder, claiming enhancement on the ground that the rent paid by a raiyat is below the prevailing rate should prove the rates of rent paid during a period of not less than 3 years. If the majority of the raiyats of a village have agreed to pay a certain rate of rent and paid that rent by reason of a rise in the price of produce or improvement of the land, why should the landholder have to wait for 3 years before he could sue the remaining dozen or score of raiyats for enhancement of rent at that rate? If these raiyats have any grounds entitling them to continue to hold at a lower rate of rent they may prove such ground as well at the time as 3 years after.

Section 32 (a).—Enhancement of rent on the ground of a rise in price of produce would be more visionary than real if, in addition to the other limitations, the restrictions contained in this section are allowed to stand. The Court is required to ascertain the price by comparing the average prices during the 10 years' immediately preceding the date of suit. An average of such a long period will necessarily reduce the rate of enhanced rent and deprive the landholder of his proper dues. It would be enough, for the purpose of determining whether a rise in price is merely casual or steady if the average of 3 years is taken. In connection with this matter it is noticeable that section 38, which provides for reduction of rent on the ground of a fall in the price of produce does not contain the rule to which I object. In all fairness, the rule of procedure should be the same in both cases, but from the way in which section 38 is worded there is nothing to prevent the Court from decreeing reduction of rent on the basis of an average of 2 or 3 years.

Section 32 (b).—The restriction to enhancement contained in this clause is based on a wrong assumption of facts and on false reasoning. The clause provides that, for the purpose of determining the enhanced rent according to the rule of proportion, the average price should be reduced by ⅓rd of the excess, that fraction representing the increased cost of cultivation. The portion of the Report of the Bengal Government (segment 44), on the basis of which the rule has been introduced, proceeds on wholly erroneous data from beginning to end. Enhancement by the rule of proportion as contained in the first part of this clause involves three different contingencies as regards the costs of cultivation. The costs of cultivation (1) might have increased in the same ratio as the price of produce; (2) they might have increased in a less ratio; (3) they might have increased in a greater ratio. If these costs be taken into consideration the result, by the rule of proportion, would be wholly unaffected in the first case; the landholder would be entitled to get more in the second case in the shape of enhanced ren- than he would otherwise get, and it is only in the third case that the raiyat would be entitled to a reduction in the enhanced rent. But where is the evidence to show that the costs of collection have increased in a greater ratio than the price of produce? The statement made by some of the officers to the effect that the costs have increased goes for nothing, as they may have increased in the same or in a less ratio than the price of produce. To illustrate our meaning we shall take a hypothetical case. Let the value of the annual produce of a bígáh of land be Rs. 8, of which Rs. 3 represents the costs of cultivation, Rs. 3 the rent and Rs. 2 the profit of the raiyat, and let the rise, as assumed by the Bengal Government for purposes of illustration, be 25 per cent. in prices, so that the value of the annual produce has become Rs. 10. Then, under the simple rule of proportion, the enhanced rent would be Rs. 3-12, the profit of the raiyat under the rule of proportion would be Rs. 2-8, and the balance Rs. 3-12 would represent the costs of cultivation. The rule of proportion, therefore, assumes that the costs of cultivation have risen in the same proportion as the price of produce—an assumption which in a majority of cases is far more favorable to the raiyat than to the landholder. It is this which induced the learned Judges in Thakurany Dasi's case to hold that the cost of cultivation should not be taken into calculation in working the rule of proportion. The report of the Bengal Government states: "Thus if prices rise 25 per cent. they would increase the rent 12½ per cent., and allow the other 12½ per cent. to go as an allowance for increase in costs of production." It is easy to see that this is both arithmetically and logically erroneous. If 12½ per cent. be allowed for costs of cultivation out of the landholder's share, the actual allowance for such costs would be 37½ per cent.

Section 33 (a).—The necessity of registering landlord's improvements created by this section would involve an amount of expensive enquiry which few landholders will care to invite, and the result will, therefore, be to deprive them of enhanced rents to which they are fairly entitled.

Section 34 (b).—Where land is washed away or covered with sand, it is the landlord who suffers. A portion of the land on which lay the security for his revenue is gone. The raiyats who held the land would be welcome to cultivate other plots of lands, but the loss to the landholder is irretrievable. As some compensation for such cases, might not they reasonably ask that they should be allowed the whole benefit of improvements in land caused by natural causes?

Section 38 (b).—The same rule of procedure as regards the determination of average prices should hold good both in cases of enhancement and reduction of rent. If it be an average of 10 years in the one case let it be the same also in the other.

Section 40.—Few provisions in the Bill will do more harm to the Behar landholders than the provision contained in this section for the commutation of produce rent into money rent on the application of the raiyat. The institution of payment in kind is one eminently deserving of every encouragement at the hands of the legislature. A Government settlement-officer has rightly observed: "It gives the landlord a fair profit in any improvement he may make; the rents are self-adjusting; the tenant is not driven into debt to meet a fixed demand; if he borrows, he borrows from his landlord, a less exacting creditor than the village banker; a feeling of mutual interdependence and self-interest is created between landlord and tenant; the former is more than a mere rent collector, his own prosperity depends on that of the cultivator." If commutation is allowed at the instance of the raiyat it would entail all the trouble, expense and litigation inseparable from settlements of money rent, involve raiyats in debt, and seriously affect the cause of agriculture. Lands for which produce rents are paid usually require the co-operation of the landholder for their cultivation. In most places, as in the districts of Patna and Gya, such co-operation is indispensible. The utter uselessness of attempts on the part of individual raiyats to cultivate such lands without the help of the landholder is nowhere better explained than in the very valuable letter written on the subject by Bábú Bhupsen Sing, Government Pleader of Gya. He writes: "Because, in the first place, his holding being scattered in small plots and patches all over the village area, many at considerable distances from the *ahars* and *pynes*, he will not think it worth his while to spend any money upon the construction and repairs of the common reservoirs and water-courses; secondly, because he has not the means, nor has he any credit with money-lenders, to raise the required sum by loan; thirdly, because, in the present state of the country, the habits of the people, their ancient and inherited mode of thinking, and their want of confidence in each other, so natural in monetary transactions among the ignorant and illiterate mass to which the majority of the cultivators belong, would make combination and raising up of subscriptions among themselves, creation of a joint common fund and the appointment of trustees for the proper management of such a fund, anything but practicable within the bounds of possibility; fourthly, because, assuming, even for the sake of argument, the possibility of the creation of such a fund and the appointment of such trustees as aforesaid, the mob would be without a lead, and each raiyat having paid for the common reservoirs and water-channels would claim the priority of irrigating his fields, and try to assert his rights or supposed rights, by means, fair or foul, which would often lead to serious affrays, resulting in the "breaking of bones and shedding of blood, and sometimes terminating in murders and man-slaughters."

Chapter VI.—The rights given by the Bill to a non-occupancy-raiyat will, to all intents and purposes, convert him into an occupancy-raiyat. He may (section 85) sub-let his holding so as to make the sub-lease binding for 9 years, although his own tenure might be for a much shorter time. The landlord will have no power to eject him for refusal to pay enhanced rent. He must serve upon him a notice of enhancement, sue him in Court, and it is only when the raiyat refuses to pay rent at the rates paid by occupancy-raiyats that the landlord may get a decree for ejectment. A non-occupancy-raiyat may (section 79), as a matter of right, dig a well, and erect a dwelling-house and out-offices on his land and make any other improvement after having first served a notice on his landlord requiring him to do so. When a decree for ejectment is passed the Court may extend the time beyond 15 days, the raiyat will be entitled to get from his landlord the price of the crops, if any, on the land or the cost of the preparation of the land and also (section 82) compensation for improvements made by him. If the landlord applies for a record and settlement of rights, or if the process is forced upon him by the Local Government, the rent of the non-occupancy-raiyat, whether enhanced or reduced, will hold good for 5 years. All these provisions are violent inroads upon well-recognized rights of landholders. It appears to us, however, that the effect of their operation would be to place non-occupancy-raiyats in a much worse position than at present. Having an absolute right of ejecting such a raiyat on the expiry of the term of his lease, the landholder will in every case grant short term leases with a view to protect his interests and thus reduce non-occupancy-raiyats to mere tenants-at-will. For the purpose of providing for the comparatively small number of cases in which landholders have not or may not protect themselves by contract, a number of sections have been introduced in different parts of the Bill which might well be omitted. They simply add to the radical aspect of the measure without doing any corresponding good.

Chapter VII.—I shall discuss the provisions of this chapter along with section 85 which might well have formed a part of this chapter.

Section 50 (2).—The operation of the rule of 20 years' presumption has been most injurious to the landholders. Instead of merely giving the raiyat a facility for proving that he and his ancestors before him have been in possession by payment of rent at a uniform rate since 1793 in cases where he has been actually in such possession, it has, like a rule of prescription or of limitation, created rights where none existed before. By the very circumstances of their position the landholders have been unable in most cases to rebut the presumption. Those landholders whose families have been in possession of estates since 1793 form a very insignificant number, the vast majority having acquired their estates by purchase since that time, and as it is notorious that the records of landholders are badly kept, and the climate of the country is inimical to the preservation of old records, it is easy to see that excepting a very few cases landholders have

been wholly unable to discharge the burden laid upon them by law. The injustice of this rule of presumption has been exposed by none so well as by the Hon'ble Mr. Reynolds in the report which accompanied his draft Bill. He is supported in this respect by a large number of experienced Revenue Officers, District and Subordinate Judges, who were consulted by the Bengal Government on the subject. Mr. H. L. Dampier, Mr. E. E. Lowis, Mr. G. N. Barlow, Mr. Kean, Mr. D. W. Doyly, Mr. R. Porch, Mr. A. Weekes, Mr. C. B. Garrett, Mr. J. Tweedie, Babu Srinath Rai, Babu Bhagaban Chandra Chakerbutty, Babu Naffar Chandra Bhutta, Syed Moazim Hossein and others have recommended either the abolition of this rule of presumption or a material modification of it. Considering that the rule is opposed to the recognised principles of evidence, that it is opposed to the fact that from ½ to ⅔rds of the area of these provinces was waste at the time of the Permanent Settlement, that it has been in operation for the last twenty-five years during which all who really required it and many more have had their titles judicially declared, that it places in the way of auction-purchasers, seeking to get their just dues, obstacles which are practically insurmountable, and that it would operate in future with double hardship upon the landholder, it is but fair to him that the rule should be expunged from the Bill. The justice and necessity of its abolition cannot be better supported than by referring to section 190 of the Bill. When Government with all the means and appliances which a well-kept and organised system of accounts placed at their disposal, find it necessary to protect their own interests by freeing those khas mehals which have never been permanently settled (and these form the majority) from the operation of this rule of presumption, how much more imperative must be the necessity for an amendment of the law in the interests of private landholders?

Section 50 (3).—The question as to in what cases the rule of 20 years' presumption, notwithstanding that land has been added to or taken from a holding should apply should be left to the decision of the Courts, according to the merits of each case. A hard-and-fast rule, that the presumption shall appy to all cases of consolidation or reduction of holdings may be fraught with great mischief. The remarks of Sir R. Couch in this connection contained in a ruling reported in 21 W. R. 267 are well worth considering.

Section 56 (4).—Considering that section 58 gives the tenant full remedy for refusal or neglect on the part of his landlord to give him a receipt in proper form, this sub-section is wholly unnecessary. It is likely to prove a fruitful source of litigation by holding out to the tenant a prospect of discharge from all liability, if he can shew that his landlord has not put in some one particular in his receipt although it might have been from ignorance or oversight.

Section 58.—A demand of the receipt by a letter under a registered cover should precede the institution of a suit for recovery of penalty. The section, as it is, would offer a great temptation to the tenant to refuse to take the receipt and sue his landlord for recovery of double the amount paid by him.

Section 61.—Clauses (*c*) and (*d*) of this section are objectionable. A landholder's agent might have once refused to take rent from a raiyat on the ground of his not being a recorded tenant, or on the ground of some dispute as to the amount of rent, but that is no reason why it should be assumed that he would refuse to take rent at all future time, notwithstanding that the matters in dispute have been settled. There should be a tender of payment in every case before deposit is allowed. Nor should the raiyat be allowed to constitute himself a judge of his landlord's title, and to deposit his rent in Court on the plea that by reason of a suit instituted by a third party, against his landlord, he feels a *bonâ fide* doubt as to his title to receive it.

Section 64 (1).—If this sub-section were made applicable only to rents deposited under clause (*d*) of section 61, we should have nothing to say; but we strongly object to it as it clearly refers to all classes of deposit of rent. The Court should certainly have no power to pay money to B, when the raiyat has deposited to the credit of A.

Sections 74 and 75.—Exception should have been made in these sections in regard to such impositions "in addition to actual rent" which are allowed by law. Take for instance the case of zamíndárí dawk charge, which is by law (Act VIII of 1862, B.C.) payable by the zamíndár, but which he may (section 9) stipulate with his raiyats for payment by them. Take again, the case of the road cess. It is payable by law both by the raiyat and his landlord in certain proportions, but there is nothing to prevent the latter to bind the former by contract for the payment of the whole amount by him. Sec. 4, Indian Law Reports, Calcutta, 576. The Salamy which the landholder is clearly entitled to get for parting with a portion of his rights, *e. g.*, allowing the tenant to take earth for brick-making, should also be expressly excepted. This is the more necessary, as the penalty provided in section 74 is very heavy.

Sections 76—85.—These sections, about improvements and compensation for improvements have been strongly objected to by landholders. If they are allowed to stand, landholders should be given the prior right to make an improvement, where both they and their raiyat wish to make it; the right of non-occupancy raiyats to make improvements should be taken away, and the difference in this connection between an occupancy-raiyat holding at a fixed rent or fixed rate of rent, and other occupancy-raiyats should be abolished. Section 77 furnishes another instance of the great confusion which will arise, if this distinction is maintained. It is provided in clause (3) that if there is a dispute between the raiyat and his landlord "as to the right to make an improvement," the Collector should "decide the question and his decision shall be final." The Collector must therefore determine finally and conclusively, although quite in an incidental way, whether a raiyat holds at a fixed or enhancible rent.

Section 85.—The effect of the various provisions of the Bill regarding sub-letting and under-raiyats would be to give a great impetus to the progress of the institution, although both the Secretary of State in Council and the Government of India have expressed a desire that the institution should be discouraged. A registered sub-lease will be ordinarily binding for nine years, the sub-lessee's rent may not be enhanced beyond a certain percentage over the lessors' rent, in certain cases of sale of the lessors' title the sub-lease cannot be avoided, and even in cases of abandonment by the lessor he will have the right to hold on if he agrees to pay the rent payable by his lessor. These provisions would be more harmful to landholders and their raiyats than a provision of free sale of occupancy holdings with the restrictions which the revised Bill imposed upon it.

Section 86 (2).—The Bill provides for a notice of six months to be given to the raiyat in a case of ejectment. It is fair to the landholder that he should receive a notice of an equal period in a case of surrender.

Section 86 (3).—This clause is objectionable. The notice may fairly be presumed if the landholder lets the surrendered land to another raiyat in the beginning of the year, but to presume it in any other case would be doing him wrong. To presume the service of the notice from the fact that the raiyat has taken a new holding in the name of a relative or friend would be contrary to all rules of evidence, and to raise the presumption from the fact that the raiyat has ceased for three months to live in the village, would be to expect the landholder to act in a way quite opposed to the provisions of section 87. When the question is one of continued liability of the raiyat to pay rent, he will be presumed to have surrendered his holding simply from the fact of his having ceased to live in the village for three months, but when the question is one of the landholder's right to re-let land which has been abandoned, no abandonment will be presumed till the expiry of the year, in which the raiyat so abandons, and not even then till the Collector on the application of the landlord has published a notice in the locality. It is provisions like these which have given the Bill such an one-sided character.

Section 87.—The attempt made in this section to formulate the nature of evidence required to prove an abandonment, has singularly failed. A raiyat must (1) abandon his residence; (2) omit to make any arrangement for the payment of rent, and (3) cease to cultivate the land, before he can be said under the section to have abandoned his holding. In the case therefore of a pykust or non-resident raiyat, there can be possibly no abandonment of a holding, unless the raiyat abandons his native village belonging to a different landholder. The landholder will have no right to let the lands abandoned by a pykust raiyat to another raiyat until the pykust raiyat "abandons his residence," a contingency which may never happen. Again, there is no reason why a landholder should have to wait for one year, and lose his year's rent, if he is satisfied that the raiyat has really abandoned his holding. The provision for the publication of notice contained in clause (2) and for the recovery of possession by the raiyat contained in clause (3) would be a sufficient check against any *malâ fides* of the landholder.

It should be also observed that clause (3) extends the time within which a raiyat may sue to recover possession from one year to two years. This extension of time is under the circumstances of the case, altogether unnecessary, and it will complicate matters, and give rise to litigation. If the land be let in the meantime to a settled raiyat of the village, and if he lets it to another under-raiyat under a registered sub-lease, what an amount of confusion would be caused?

Section 90.—This section takes away important rights of landholders as regards measurement. If the raiyat refuses to attend the measurement and point out his land, clause (2) will place him in no worse position than a raiyat who has attended and pointed out his land. In both cases, the measurement will be presumed to be correct unless the contrary is shewn. The most noticeable defect in the section is however, the absence of any provision for cases in which a landholder, usually an auction-purchaser, is unable to ascertain the raiyats who are in possession of the lands of his estate. A landholder may under such circumstances, it is true, make an application under the Record-of-Rights Chapter, but it would throw upon him not only a deal of expense and trouble but would place him at the mercy of the Revenue-officer.

Sections 93-100.—The strong support which the Bengal Government gave in their Report to the provision for the appointment of managers in joint estates was based on an erroneous assumption that it was the existing law. That law was, however, repealed in 1874 when other obsolete enactments were repealed. Since then no necessity has been made out for a provision like this which will place in the hands of a small fractional shareholder of an estate the power of seriously annoying and injuring his co sharers. Considering that the holders of small estates collect their own rents from the raiyats, the appointment of a manager by Court will eat up all their profits. The facilities which the law and the rulings of the Courts have given for the partition of joint estates have rendered such a provision as this wholly unnecessary.

Sections 101-114.—Both among landholders and raiyats this is one of the most unpopular portions of the Bill. These sections give to the Executive Government a power to convulse rural society to an extent far exceeding anything which any differences arising out of the ordinary relations of landlord and tenant can create. Even under circumstances of agrarian disturbances neither of the contending parties would avail themselves of these provisions. The Agrarian Disturbance Act of 1875 remained a dead-letter so long as it was in the Statute Book. The Select Committee have made these provisions much more objectionable than before by introducing a section (section 111) which gives the Revenue-officers power to reduce exist-

ing rents either on the grounds allowed by law or on any other ground, and we think that in justice to the landholders and in the interests of the raiyats themselves, these sections should be omitted.

Section 116.—A record of proprietor's private lands should be made only on his application, as it would otherwise put the landholder and his raiyats to great expense and trouble at a time when there is perhaps perfect peace and harmony between the parties and when neither of them is prepared for the enquiry. The provision empowering the Local Government to order such an enquiry at any time they please, and without any application on the part of the raiyats or their landlord, is, therefore, highly objectionable. Section 120 involves an anomaly. If a landholder after having cultivated by his own servants a piece of land for 12 years before the passing of the Act, turns it into raiyatti land, he will still be enabled after a lapse of 15 or 20 years, when the record will be made, to claim it as his private land and to get it so recorded.

CHAPTER XII.—The provisions relating to distraint amount virtually to an abolition of the institution. They will give the landholders no greater powers than what the Code of Civil Procedure gives to every plaintiff who may wish to get an attachment before judgment. The landholder looks upon the crops as the security for the recovery of his rent. The sale of the houses and the goods and chattels of raiyats is often times quite inadequate to meet the landholder's claim. In the case of non-resident raiyats the crops raised by them are the landlord's only security for his rent. If they remove the crops before paying the rent the landholder generally loses his rent for the year. The procedure contained in this chapter would therefore result in this, that while the landlord is engaged in making application to the Court and satisfying it of the *bona fides* thereof, the raiyat will quietly remove his crops and the former will not only lose his rent but also the costs of the application. It is a misnomer to call that a distraint which is nothing more or less than a process of Court. The present law on the subject does not give the landholder any power which might be possibly abused. He can only attach the crops, but he cannot interfere with the raiyat's doing what he likes with the crops without the assistance of the Court. It is the fear of the consequences if the raiyat removes the distrained crops that constitute the landholder's whole security for the rent. There have been no complaints on the part of judicial officers of any abuse of the power which the present law allows with impunity. On no point, on the contrary, have public officers expressed themselves more forcibly than in condemnation of the procedure contained in the Bill and in support of the existing law. The Presidency Conference, the Patna Conference, the Rajshahi Conference, the Burdwan Conference, the Orissa Conference and a number of individual officers have recommended the retention of the existing law.

Section 153 (b).—The rule allowing an appeal in all cases should not be interfered with. Rent suits should not be judged by the amount of the claim. Very often they possess an importance to which the value of the suit is no index. All those whom we have consulted are of opinion that it is much better that they should have the constitutional right of an appeal than that their suits should be finally decided by special officers selected by the local Government.

Section 154.—The time within which a suit for enhancement may be instituted should be extended to the first 9 months in order to enable the landholder to judge from the condition of the crops whether he should institute the suit in a particular year. No one would like to institute a suit for enhancement when the prospect of the crops is gloomy or distress is impending over the country.

Section 155 (1).—Provision should be made for service by Court of the notice of ejectment. If it were left to the landholders, as this sub-section does, the service would be denied in most cases and the enquiry would entail unnecessary expense and delay.

Section 156.—A decree for ejectment severs the relation between landlord and tenant. If there be crops on the land they go with the land to the landholders, as ruled in a case reported in 5 Indian Law Report, Calcutta, 135. This section lays down a principle and provides for an elaborate enquiry quite in opposition to the judge-made law on the subject. A raiyat may be ejected only at the close of the year when the crops have been reaped. There is, therefore, no necessity for this section. Moreover, when a raiyat's interest may be sold outright four times in the year, a provision regarding crops in cases of ejectment only would give the raiyat an illusory protection.

Section 160.—This section introduces serious changes in the present law regarding what are called the protected interests. There could be no objection to a lease for building or manufacturing purposes granted at a fair rent being protected from avoidance on the sale of the superior tenure as provided in the present law, but this section goes much farther. A lease of land whereon manufactories have been erected, perhaps without the consent of the landholder, and reserving a nominal rent is declared a protected interest by this section; as also judicial leases granted to non-occupancy raiyats and permanent leases granted by the out-going tenure-holder. The effect of these provisions will be that it would be in the power of a tenure-holder to creates leases in the names of his servants and relations which would absorb the entire profits of the tenure and then put it up to sale by making default in the payment of rent. Most tenures would be rendered quite valueless in no time if these provisions are retained.

Sections 161—168.—These Sections introduce alterations in the existing law which will prove a fruitful source of litigation. No necessity whatever was felt for provisions like these. If the sale be made in the first instance subject to the registered encumbrances, and then, after the sale proceeds have been found to be inadequate, a second sale be made with power to avoid such encumbrances, it would saddle the judgment-debtor with unnecessary costs, reduce the market value of the tenure and delay the realisation of money due to the landholder. These

evils would be greatly enhanced if the procedure be extended by the Local Government to sales of occupancy holdings under Section 168.

Section 177.—The preamble of Regulation V of 1812 shows that although the Legislature of 1793 enjoined the exchange of written engagements between landholder and tenant, the raiyats of these Provinces in a body deliberately refused to enter into written engagements which would make it obligatory on them to pay as rent, cesses, and abwábs which they had been paying as benevolences, and that that Regulation was passed, among other objects to provide for such refusal. Since that time there has been vast progress in the material prosperity of the country, in the spread of education and in the condition of the raiyats. They might well therefore be left to the resources of their own judgment in matters relating to their own interests. They will be perfectly free to contract away their liberties and become emigrants in a strange country, to borrow money at usurious rates of interest involving their ultimate ruin, and to mortgage their holdings or sell them in some cases, and yet this section imposes restrictions upon freedom of contract in a variety of matters in which they are the best judges of their own interests. It is very doubtful how far these would be effective in practice and how far they would prevent parties from having recourse to shifts and devices for the purpose of evading the law. These provisions, it should be observed, offer a striking contrast to the provision contained in section 192. In the case of private landholders, free contract is restricted in the interest of raiyats; in the case of Government no contract entered into by a landholder with his raiyats before the property came into the hands of Government would be respected if it interfered with the right of Government to assess fair and equitable rent upon the land.

Section 182.—This Bill should have nothing to do with homestead lands in towns and trading places. Where homestead lands do not form part of a raiyatti holding its incidents should be left to custom and contract.

Section 184.—The schedule to which this section refers has extended from one year to two years the time within which a raiyat dispossessed by his landlord may sue to recover possession. We see no reason why this alteration in the existing law should be made.

Section 186.—A provision which converts into a criminal offence acts, otherwise not criminal, which relate to the daily transactions of life is most objectionable. The provisions of the section are, moreover, very one-sided. In the case of the landholder, for instance, an "attempt to distrain" would be a criminal offence, but in the case of the raiyat not only is an attempt to resist distraint or remove distrained crops not criminal, but he may remove crops stored for division or appraisement under the Danabundy system without subjecting himself to any penalty, civil or criminal.

Sections 191 & 192.—For reasons stated in different parts of this Dissent, these two sections should be omitted and Government should be placed in exactly the same position regarding landholding rights as private landholders.

Section 196.—We do not see either the necessity or the value of this section. If the Acts of the Local Legislature in any way conflict with the provisions of this Bill such Acts would be rendered inoperative by the Indian Councils Act, 1861. If those Acts provide for matters not embraced by this Bill they would have the force of law without any provision like this.

Schedule I.—We strongly object to the sections of Regulation VIII of 1793 mentioned in this schedule being omitted. They contain the most important provisions on which the Permanent Settlement was based, next in importance only to the provisions fixing the revenue in perpetuity.

We desire to say, in conclusion, that the Bill does not provide for any summary procedure for the recovery of rent. By making an express provision for decrees directing recovery of rent by instalments, by extending the time before a sale can take place from 20 to 30 days from the date of the proclamation, and by giving the Courts discretion to extend beyond 15 days the time within which a raiyat might protect himself from ejectment by payment of the decreed amount, the Bill has, on the contrary, thrown additional obstacles in the way of recovery of rent.

Considering the importance of the measure and the material changes in the Bill made by the Select Committee since their Preliminary Report was submitted last year we think that it should be republished before its provisions are taken into consideration by the Council.

PEÁRI MOHAN MUKERJI.
LAKSHMESHWAR SINGH.

12th February 1885.

I wish to add that I regret that my unavoidable absence from the Meetings of the Select Committee in the last stage of their labors and the very short time at my disposal between the receipt by me of the draft report of the majority of the Committee and the date fixed for the submission of the report to the Council, prevents me from recording my opinions at greater length. I adhere to the opinions expressed in my last year's dissent. The measure as a whole is even now opposed to the just rights of the proprietors of land and detrimental to the best interests of the entire community. If not withdrawn, it still requires further and serious consideration by the light of actual ascertained facts and circumstances of the country as opposed to mere opinions and *ex-parte* reports.

LAKSHMESHWAR SINGH.

12th February 1885.

No. III.

THE BENGAL TENANCY BILL, 1885.

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Bengal Tenancy Bill.

(*Chapter I.—Preliminary.—Secs. 1—3.*)

No. III.

Explanation of abbreviations in margin.

D. means Mr. Field's Digest.

C. B., the Bill prepared by the Commission.

B. B., the Bill submitted by the Bengal Government with letter No. 849, dated 27th July, 1881.

SECTION means the corresponding section of the Bill No. II, dated March, 1884.

A

BILL

TO

Amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.

WHEREAS it is expedient to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

s 1.] **1.** (*1*) This Act may be called the Bengal Tenancy Act, 1885. Short title.

(*2*) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, appoint in this behalf. Commencemen

s. 1. 1.] (*3*) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Town of Calcutta, the Division of Orissa, and the Scheduled Districts specified in the third part of the First Schedule of the Scheduled Districts Act, 1874; and the Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, extend the whole or any portion of this Act to the Division of Orissa or any part thereof. Local extent. of

s. 2. 2. 2.] **2.** (*1*) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation. Repeal.

(*2*) When this Act is extended to the Division of Orissa or any part thereof, such of those enactments as are in force in that Division or part, or, where a portion only of this Act is so extended, so much of them as is inconsistent with that portion, shall be repealed in that Division or part.

(*3*) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

(*4*) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

3. In this Act, unless there is something repugnant in the subject or context,— Definitions.

(*1*) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government khás mahál- and revenue-free lands not entered in any register: [D., § 1. C. B., s. 3. B. B., s. 3. Section 3 (1).]

(*2*) "Proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate. [D. § 1. C. B., s. 3. B. B., s. 3. Section 3 (2).]

(*3*) "Tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person. [Section 3 (3).]

(*4*) "Landlord" means a person immediately under whom a tenant holds, and includes the Government. [Section 3 (4).]

(*5*) "Rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant: [D., § 1. C. B., s. 3. B. B., s. 3. See s. 227. Section 3 (5).]

In sections 58 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII and Schedule III of this Act, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent.

(*6*) "Pay," "payable" and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery." [Section 3(6).]

(*7*) "Tenure" means the interest of a tenure-holder or an under-tenure-holder.

(*8*) "Permanent tenure" means a tenure which is heritable and which is not held for a limited time.

(*9*) "Holding" means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy. [Section 3(7).]

(*10*) "Village" means an area included in a village map of the revenue-survey within the same exterior boundary, or, where no such maps have been prepared, such area as any officer appointed by the Local Government in this behalf may determine after local inquiry held on such notice as the Local Government considers sufficient for giving information to all persons interested. [B. B., s. 19, Expl II. Section 27.]

(*11*) "Agricultural year" means, where the Bengalí year prevails, the year commencing on the first day of Bysák, where the Fasli or Amlí year prevails, the year commencing on the first day of Asin, and, where any other year prevails for agricultural purposes, that year. [Sec. 3 (8).]

Bengal Tenancy Bill.

(*Chapter II.—Classes of Tenants.—Secs. 4-5.*)

(*Chapter III.—Tenure-holders.—Secs. 6-7.*)

[D. § 20 & 37. C. B., ss. 6 & 10. B. B., ss. 6 & 15. Section 3 (9).]

(*12*) "Permanent Settlement" means the Permanent Settlement of Bengal, Bihár and Orissa, made in the year 1793.

[Section 3 (*11*).]

(*13*) "Succession" includes both intestate and testamentary succession.

[C. B., s. 1. B. B., s. 3. Section 3 (*12*).]

(*14*) "Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to.

[Section 3 (*13*).]

(*15*) "Prescribed" means prescribed from time to time by the Local Government by notification in the official Gazette.

[Section 3 (*14*).]

(*16*) "Collector" means the Collector of a district or any other officer appointed by the Local Government to discharge any of the functions of a Collector under this Act.

[Section 3 (*15*).]

(*17*) "Revenue-officer" in any provision of this Act includes any officer whom the Local Government may appoint by name or by virtue of his office to discharge any of the functions of a Revenue-officer under that provision.

(*18*) "Registered" means registered under any Act for the time being in force for the registration of documents.

CHAPTER II.

CLASSES OF TENANTS.

[Section 4.]

Classes of tenants.

4. There shall be, for the purposes of this Act, the following classes of tenants, namely:—

(1) tenure-holders, including under-tenure-holders,

(2) raiyats, and

(3) under-raiyats, that is to say, tenants holding whether immediately or mediately under raiyats;

and the following classes of raiyats, namely:—

(*a*) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,

(*b*) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and

(*c*) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy.

[Section 5.]

Meaning of "tenure-holder" and "raiyat."

5. (*1*) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includesalso the successors in interest of persons who have acquired such a right.

[D., § C. B., B. B., "raiyat" "land."]

(*2*) "Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(*3*) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(*4*) In determining whether a tenant is a tenure-holder or a raiyat the Court shall have regard to—

(*a*) local custom; and

(*b*) the purpose for which the right of tenancy was originally acquired.

(*5*) Where the area held by a tenant exceeds one hundred standard bighás, the tenant shall be presumed to be a tenure-holder until the contrary is shewn.

CHAPTER III.

TENURE-HOLDERS.

Enhancement of rent.

Tenure held since Permanent Settlement liable to enhancement only in certain cases.

6. Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

[Enhancement of rent. D., § C. B., B. B., Section

(*a*) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or

(*b*) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

Limits of enhancement of rent of tenures.

7. (*1*) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

[D., § C. B., 12. B. B., 10. Section

(*2*) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

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(*Chapter III.—Tenure-holders.—Secs. 8—15.*)

(3) In determining what is fair and equitable the Court shall not leave to the tenure-holder as profit less than ten per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them, and shall have regard to—

(*a*) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and

(*b*) the improvements, if any, made by the tenure-holder or his predecessors in interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

Power to order gradual enhancement.

8. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has been reached.

Rent once enhanced may not be altered for fifteen years.

9. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced.

Other incidents of tenures.

Permanent tenure-holder not liable to ejectment.

10. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition consistent with the provisions of this Act and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

Transfer and transmission of permanent tenure.

11. Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immoveable property.

Voluntary transfer of permanent tenure.

12. (1) A transfer of a permanent tenure by sale, gift or mortgage (other than a transfer by sale in execution of a decree or by summary sale under any law relating to patní or other tenures) can be made only by a registered instrument. *Other incidents of tenures.* [D., § 27 C. B., ss. 37, 40. B. B., ss. 39, 41.]

(2) A registering officer shall not register any instrument purporting or operating to transfer by sale, gift or mortgage a permanent tenure unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called "the landlord's fee") of the following amount, namely:— III of 1877.

(*a*) when rent is payable in respect of the tenure, a fee of two per centum on the annual rent of the tenure: provided that no such fee shall be less than one rupee or more than one hundred rupees; and

(*b*) when rent is not payable in respect of the tenure, a fee of two rupees.

(3) When the registration of any such instrument is complete, the registering officer shall send to the Collector the landlord's fee and a notice of the transfer and registration in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

Transfer of permanent tenure by sale in execution of decree other than decree for rent.

13. (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, the Court shall, before confirming the sale under section 312 of the Code of Civil Procedure, require the purchaser to pay into Court the landlord's fee prescribed by the last foregoing section and such further fee for service of notice of the sale on the landlord as may be prescribed. [C. B., ss., 47, 48 (c). B. B., ss. 39, 40 (c). Section 16.] XIV of 1882.

(2) When the sale has been confirmed, the Court shall send to the Collector the landlord's fee and a notice of the sale in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

Transfer of permanent tenure by sale in execution of decree for rent.

14. When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, the Court shall send to the Collector a notice of the sale in the prescribed form. [Section 17.]

Succession to permanent tenure.

15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlord's fee prescribed by section 12, and the Collector shall cause the landlord's fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

Bengal Tenancy Bill.

(Chapter III.—Tenure-holders.—16-17.)

(Chapter IV.—Raiyats holding at fixed rates.—Sec. 18.)

(Chapter V.—Occupancy-raiyats.—Secs. 19-22.)

Other incidents of tenure. [Section 18 (2).]

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure, until the Collector has received the notice and fees referred to in the last foregoing section.

Bar to recovery of rent pending notice of succession.

17. Subject to the provisions of section 88, the foregoing sections shall apply to the transfer of, or succession to, a share in a permanent tenure.

Transfer of, and succession to, share in permanent tenure.

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

[Section 23.]

18. A raiyat holding at a rent, or rate of rent, fixed in perpetuity—

Incidents of holding at fixed rates.

(*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, and

[C. B., s. 13, B.B., ss. 12 & 17.]

(*b*) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

CHAPTER V.

OCCUPANCY-RAIYATS.

General.

General. [B. B., s. 19 (1) & Expl. IV (*c*). proviso. Section 24.]

19. Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land shall, when this Act comes into force, have a right of occupancy in that land.

Continuance of existing occupancy-rights.

[Section 26.]

20. (*1*) Every person who for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

Definition of "settled raiyat."

(*2*) A person shall be deemed for the purposes of this section to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

(*3*) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

(*4*) Land held by two or more co-sharers as a raiyatí holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

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(*5*) A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for one year thereafter.

(*6*) If a raiyat recovers possession of land under section 87, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than a year.

(*7*) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a raiyat.

[Sectio

21. (*1*) Every person who is a settled raiyat of a village within the meaning of the last foregoing section shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

Settled raiyats to have occupancy-rights.

(*2*) Every person who, being a settled raiyat of a village within the meaning of the last foregoing section, held land as a raiyat in that village at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

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22. (*1*) When the immediate landlord of an occupancy-holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, the occupancy-right shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

Effect of acquisition of occupancy-right by landlord.

(*2*) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, it shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

[D., Expl. C. H., Expl. B. B., Expl.

(*3*) A person holding land as an ijárádár or farmer of rents shall not, while so holding, acquire a right of occupancy in any land comprised in his ijárá or farm.

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder, or by subsequently holding the land in ijárá or farm.

Bengal Tenancy Bill.

(*Chapter V.—Occupancy-raiyats.—Secs. 23-31.*)

Incidents of occupancy-right.

Rights of raiyat in respect of use of land.

23. When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not render it unfit for the purposes of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

Obligation of raiyat to pay rent.

24. An occupancy-raiyat shall pay rent for his holding at fair and equitable rates.

Protection from eviction except on specified grounds.

25. An occupancy-raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

(*a*) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(*b*) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

Devolution of occupancy-right on death.

26. If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immoveable property: Provided that, in any case in which under the law of inheritance to which the raiyat is subject his other property goes to the Crown, his right of occupancy shall be extinguished.

Enhancement of rent.

Presumption as to fair and equitable rent.

27. The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved.

Restriction on enhancement of money-rents.

28. Where an occupancy-raiyat pays his rent in money, his rent shall not be enhanced except as provided by this Act.

Enhancement of rent by registered contract.

29. (*1*) The money-rent of an occupancy-raiyat may be enhanced by registered contract, subject to the following conditions:—

(*a*) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;

(*b*) the contract must fix the rent for a term of at least fifteen years.

(*2*) The registering officer shall, before registering a contract under this section, ascertain that the contract is not inconsistent with sections 74 and 178 of this Act, and that the raiyat is competent and willing to enter into it, and understands its nature.

(*3*) Nothing in sub-section (*1*), clause (*a*), shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding. *Enhancement of rent.*

(*4*) The Local Government may, from time to time, subject to the control of the Governor General in Council, make rules for the guidance of officers registering contracts under this section.

Enhancement of rent by suit.

30. The landlord of a holding held at a money-rent by an occupancy-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds, namely:— [D., § 43 (1) and (2). C. B., s. 22 (1), (3) and (4). B. B., s. 23 (1), (3) and (4). Section 43.]

(*a*) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for land of a similar description and with similar advantages in the same village, and that there is no sufficient reason for his holding at so low a rate;

(*b*) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;

(*c*) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent;

(*d*) that the productive powers of the land held by the raiyat have been increased by fluvial action.

Explanation.—"Fluvial action" includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable.

Rules as to enhancement on ground of prevailing rate.

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate— [Section 44.]

(*a*) in determining what is the prevailing rate the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the raiyat and the prevailing rate found by the Court;

(*b*) if in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rules made under section 392 of the said Code; XIV of 1882. [Act XII of 1881, s. 20.]

Bengal Tenancy Bill.

(Chapter V.—Occupancy-raiyats.—Secs. 32-38.)

Enhancement of rent.

(c) in determining under this section the rate of rent payable by a raiyat his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate; and whenever it is found that by local custom any description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom;

(d) in ascertaining the prevailing rate of rent the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration.

[Section 46.]

Rules as to enhancement on ground of rise in prices.

32. Where an enhancement is claimed on the ground of a rise in prices—

(a) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison;

(b) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison: provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period;

(c) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (a), the Court may, in its discretion, substitute any shorter periods therefor.

[Section 46.]

Rules as to enhancement on ground of landlord's improvement.

33. Where an enhancement is claimed on the ground of a landlord's improvement—

(a) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act;

(b) in determining the amount of enhancement the Court shall have regard to—

(i) the increase in the productive powers of the lands caused or likely to be caused by the improvement,

(ii) the cost of the improvement,

(iii) the cost of the cultivation required for utilizing the improvement, and

(iv) the existing rent and the ability of the land to bear a higher rent;

(c) a decree under this section shall, on the application of the tenant or his successor in interest, be subject to re-consideration in the event of the improvement not producing or ceasing to produce the estimated effect.

Rules as to enhancement on ground of increase of productive powers due to fluvial action.

34. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

(a) the Court shall not take into account any increase which is merely temporary or casual;

(b) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

Enhancement by suit to be fair and equitable.

35. Notwithstanding anything in the foregoing sections the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

Power to order progressive enhancement.

36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached.

Limitation of right to bring successive enhancement suits.

37. (1) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if within the said period of fifteen years the rent has been commuted under section 40 or a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto or dismissing the suit on the merits.

(2) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure.

Reduction of rent.

Reduction of rent.

38. (1) An occupancy-raiyat holding at a money-rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise, namely:—

(a) on the ground that the soil of the holding has without the fault of the raiyat

become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, or

(*b*) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent.

(2) In any suit instituted under this section the Court may direct such reduction of the rent as it thinks fair and equitable.

Price-lists.

Price-lists of staple food-crops.

39. (*1*) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(*2*) The Collector may, if so directed by the Local Government, prepare for any local area, like price-lists relating to such past times as the Local Government thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(*3*) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the local area to which it relates, and if any landlord or tenant of land within the local area within the said period of one month presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(*4*) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(*5*) The Local Government shall cause to be compiled from the periodical lists prepared under this section lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the official Gazette.

(*6*) In any proceedings under this chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that the prices shown thereby are correct, unless and until it is proved that they are incorrect.

(*7*) The Local Government, subject to the control of the Governor General in Council, shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

Commutation.

Commutation. [C. B., s. 86. B. B., ss. 90 and 92. Section 58.]

Commutation of rent payable in kind.

40. (*1*) Where an occupancy-raiyat pays for a holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, either the raiyat or his landlord may apply to have the rent commuted to a money-rent.

(*2*) The application may be made to the Collector or Sub-divisional Officer, or to an officer making a settlement of rents under Chapter X, or to any other officer specially authorized in this behalf by the Local Government.

(*3*) On the receipt of the application the officer may determine the sum to be paid as money-rent, and may order that the raiyat shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

(*4*) In making the determination the officer shall have regard to—

(*a*) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity;

(*b*) the average value of the rent actually received by the landlord during the preceding ten years or during any shorter period for which evidence may be available; and

(*c*) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges.

(*5*) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like manner as if it were an order made in an ordinary revenue proceeding.

(*6*) If the application is opposed, the officer shall consider whether under all the circumstances of the case it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it, he shall record in writing the reasons for the refusal.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

Application of chapter.

41. This chapter shall apply to raiyats not having a right of occupancy, who are in this Act referred to as non-occupancy-raiyats. [Section 55.]

Initial rent of non-occupancy-raiyat.

42. When a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission. [Section 56.]

Conditions of enhancement of rent.

43. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 46. [Section 57.]

Bengal Tenancy Bill.

(Chapter VI.—Non-occupancy-raiyats.—Secs. 44-47.)

(Chapter VII.—Under-raiyats.—Secs. 48-49.)

[C. B., s. 79 (5) B. B., ss. 26. 72 (5). Section 58.]

44. A non-occupancy-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise, namely :—

Grounds on which non-occupancy-raiyat may be ejected.

(*a*) on the ground that he has failed to pay an arrear of rent ;

(*b*) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected ;

(*c*) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired ;

(*d*) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

[Section 59.]

45. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy-raiyat unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

Conditions of ejectment on ground of expiration of lease.

[Section 60.]

46. (*1*) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

Conditions of ejectment on ground of refusal to agree to enhancement.

(*2*) A landlord desiring to tender an agreement to a raiyat under this section may file it in the office of such Court or officer as the Local Government appoints in this behalf for service on the raiyat. The Court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner, and when it has been so served it shall for the purposes of this section be deemed to have been tendered.

(*3*) If a raiyat on whom an agreement has been served under sub-section (*2*) executes it, and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(*4*) When an agreement has been executed and filed by a raiyat under sub-section (*3*), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(*5*) If the raiyat does not execute the agreement and file it under sub-section (*3*), he shall be deemed for the purposes of this section to have refused to execute it.

(*6*) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(*7*) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy.

(*8*) If the raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(*9*) In determining what rent is fair and equitable the Court shall have regard to the rents generally paid by raiyats for land of a similar description and with like advantages in the same village.

(*10*) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

[Section

47. Where a raiyat has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this chapter, notwithstanding that the lease may purport to admit him to occupation.

Explanation of "admitted to occupation."

CHAPTER VII.

UNDER-RAIYATS.

[Sec

48. The landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same, namely :—

Limit of rent recoverable from under-raiyats.

(*a*) when the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent.; and

(*b*) in any other case—twenty-five per cent.

[Sec

49. An under-raiyat shall not be liable to be ejected by his landlord, except at the end of an agricultural year and after a written notice to quit has been served on him in the prescribed manner not less than six months before the expiration of that year.

Restriction on ejectment of under-raiyats.

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

Rules and presumptions as to amount of rent.

Rules and presumptions as to fixity of rent.

50. (*1*) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the holding.

(*2*) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement:

Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on, or before a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

(*3*) The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

(*4*) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

Presumption as to amount of rent and conditions of holding.

51. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

Alteration of rent on alteration of area.

Alteration of rent in respect of alteration in area.

52. (*1*) Every tenant shall—

(*a*) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the holding of land which having previously belonged to the holding was lost by diluvion or otherwise without any reduction of the rent being made, and

(*b*) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area. *Alteration of rent on alteration of area.*

(*2*) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

(*a*) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire holding;

(*b*) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;

(*c*) the length of time during which the tenancy has lasted without dispute as to rent or area; and

(*d*) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

(*3*) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure, and shall not in any case fix any rent which under the circumstances of the case is unfair or inequitable.

(*4*) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the holding.

Payment of rent.

Instalments of rent.

53. Subject to agreement or established usage, a money-rent payable by a tenure-holder or raiyat shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year. *Payment of rent* [C. II, s. 55 (*a*). B. L. s. 47 (*a*). Section 67.]

Time and place for payment of rent.

54. (*1*) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due. [Section 68.]

(*2*) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village office, or at such other convenient place as may be appointed in that behalf by the landlord:

Provided that the Local Government may from time to time make rules, either generally or for

Bengal Tenancy Bill.

(*Chapter VIII.—General Provisions as to Rent.—Secs. 55—61.*)

Payment of rent.

any specified local area, authorizing a tenant to pay his rent by postal money-order.

[D., c. 101, C. B., s. 56, B. B., s. 48.]

(3) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear.

[Section 69.]

Appropriation of payments.

55. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

Receipts and accounts.

Receipts and accounts.

[D., § 61. C. B., s. 57. B. B., s. 49 (a) and (b). Section 70.]

Tenant making payment to his landlord entitled to a receipt.

56. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt given in Schedule II to this Act as can be specified by the landlord at the time of payment:

Provided that the Local Government may from time to time prescribe or sanction a modified form either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

[C. B., s. 51 (b). B. B., s. 49 (c). Section 71.]

Tenant entitled to full discharge or statement of account at close of year.

57. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive within three months after the end of the year a statement of account specifying the several particulars shown in the form of account given in Schedule II to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

Receipts and accounts. [D., s. 63. C. B., s. 57. B. B., s. (d) & 94. Section 72.]

Penalties and fine for withholding receipts and statements of accounts and failing to keep counterparts.

58. (1) If a landlord refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 56 for any rent paid by the tenant, the tenant may, within six months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

(2) If a landlord refuses or neglects to deliver to a tenant demanding the same the receipt in full discharge or the statement of account for any year prescribed in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees.

Local Government to prepare forms of receipt and account.

59. (1) The Local Government shall cause to be prepared and kept for sale to landlords at all sub-divisional offices forms of receipts with counterfoils and of statements of account suitable for use under the foregoing sections.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Local Government thinks fit.

Effect of receipt by registered proprietor.

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person. VII(B.C.) 1876.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

Deposit of rent.

Deposit of rent. [D., § 99. C. B., s. & 59. B. B., s. & 51. Section 73.]

Application to deposit rent in Court.

61. (1) In any of the following cases, namely:—

(a) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;

(b) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;

(c) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf; or

(*d*) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent;

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his holding an application in writing for permission to deposit in the Court the full amount of the money then due.

(2) The application shall contain a statement of the grounds on which it is made; shall state—

in cases (*a*) and (*b*), the name of the person to whose credit the deposit is to be entered,

in case (*c*), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and

in case (*d*), the names of the person to whom the rent was last paid and of the person or persons now claiming it;

shall be signed and verified, in the manner prescribed in section 52 of the Code of Civil Procedure, by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount as the Local Government, from time to time, by rule, directs.

Receipt granted by Court for rent deposited to be a valid acquittance.

62. (*1*) If it appears to the Court to whom an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (*a*) and (*b*) of the last foregoing section, by the person specified in the application as the person to whose credit the deposit was to be entered;

in case (*c*) of that section, by the co-sharers to whom the rent is due; and

in case (*d*) of that section, by the person entitled to the rent.

Notification of receipt of deposit.

63. (*1*) The Court receiving the deposit shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof, containing a statement of all material particulars.

(2) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith—

in cases (*a*) and (*b*) of section 61, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered;

in case (*c*) of that section, cause a notice of the receipt of the deposit to be posted at the landlord's village-office or in some conspicuous place in the village in which the holding is situate; and

in case (*d*) of that section, cause a like notice to be served, free of charge, on every person who it has reason to believe claims or is entitled to the deposit.

Deposit of rent.

Payment or refund of deposit.

[D. § 1 (6). C.B., s. 61, cls. (*b*) & (*c*). B.B., s. 52, cls. (*b*) & (*c*). Section 76.]

64. (*1*) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) The payment may, if the Local Government so direct, be made by postal money-order.

(3) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(4) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Court receiving a deposit under the foregoing sections; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

Arrears of rent.

Liability to sale for arrears in case of tenure, holding at fixed rates and occupancy-holding.

Arrears of rent.

[C. B., s. 64. B. B., s. 56. Section 77.]

65. Where a tenant is a tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

Ejectment for arrears in case of non-occupancy-holding or under-raiyat's holding.

[D. §§ 13 (5) & 93. C. B., ss. 79 (5) & 152. B. B., ss. 73 (5) & 169. Section 78.]

66. (*1*) When an arrear of rent remains due in respect of the holding of a non-occupancy-raiyat or an under-raiyat at the end of the Bengali year where that year prevails, or at the end of the month of Jeyt where the Fasli or Amli year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejectment for an arrear of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are

Arrears of rent.

paid into Court within fifteen days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court re-opens.

(3) The Court may for special reasons extend the period of fifteen days mentioned in this section.

[D. § 101. C. B., s. 56. B. B., s. 48. Section 79.]

Interest on arrears.

67. An arrear of rent shall bear simple interest at the rate of twelve per centum per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the institution of the suit.

[D., § 68. C. B., s. 90. B. B., s. 96. Section 80.]

Power to award damages on rent withheld without reasonable cause or to defendant improperly sued for rent.

68. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit:

Provided that interest shall not be decreed when damages are awarded under this section.

[D., § 69. C. B., s. 91. B. B., s. 97.]

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as it thinks fit.

Produce-rents.

Produce-rents. [C. B., s. 84. B. B., s. 88. Section 81.]

Order for appraising or dividing produce.

69. (1) Where rent is taken by appraisement or division of the produce,—

(a) if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division, or

(b) if there is a dispute about the quantity, value or division of the produce,

the Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

(2) The Collector may, without such an application, make the like order in any case where in the opinion of the District or Sub-divisional Magistrate the making of the order would be likely to prevent a breach of the peace.

(3) Where a Collector makes an order under this section, he may by order prohibit the removal of the produce until the appraisement or division has been effected.

Procedure where officer appointed.

70. (1) When a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selection of those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

(2) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made, but if either the landlord or the tenant fails to attend either personally or by agent, he may proceed *ex parte*.

(3) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector.

(4) The Collector shall consider the report, and, after giving the parties an opportunity of being heard and making such enquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just.

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, subject as aforesaid, his order shall be final and shall, on application to a Civil Court by the landlord or the tenant, be enforceable as a decree.

(6) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office. [C. B., s. B. B., s.

Rights and liabilities as to possession of crop.

71. (1) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(2) Where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing-floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

(3) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord.

(4) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

Bengal Tenancy Bill.

(Chapter VIII.—General Provisions as to Rent.—Secs. 72—75.)

(Chapter IX.—Miscellaneous Provisions as to Landlords and Tenants.—Secs. 76—79.)

Liability for rent on change of landlord or after transfer of holding.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

72. (*1*) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

(*2*) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

Liability for rent after transfer of holding.

73. When an occupancy-raiyat transfers his holding without the consent of the landlord, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent accruing due after the transfer, unless and until notice of the transfer is given to the landlord in the prescribed manner.

Illegal Cesses, &c.

Abwáb, &c., illegal.

74. All impositions upon tenants under the denomination of *abwáb*, *mahtut*, or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

75. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

Improvements.

Definition of "improvement."

76. (*1*) For the purposes of this Act the term "improvement," used with reference to a raiyat's holding, shall mean any work which adds to the value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it. *Improvement.*

(*2*) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section:—

(*a*) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

(*b*) the preparation of land for irrigation;

(*c*) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;

(*d*) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(*e*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto; and

(*f*) the erection of a suitable dwelling-house for the raiyat and his family, together with all necessary out-offices.

(*3*) But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

[Section 86.]

Right to make improvements in case of holding at fixed rates.

77. Where a raiyat holds at fixed rates, his landlord shall not be entitled, as such, to prevent him from making any improvement in respect of his holding.

[C. B., s. 77. B. B., s. Section

Right to make improvement in case of occupancy-holding.

78. (*1*) Where a raiyat has an occupancy-right in his holding, neither the raiyat nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(*2*) If both the raiyat and his landlord wish to make the same improvement, the raiyat shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

(*3*) If a question arises between the raiyat and his landlord—

(*a*) as to the right to make an improvement, or

(*b*) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question, and his decision shall be final.

[C. B., s. 77. B. B., s. 69. Section 90.]

Right to make improvement in case of non-occupancy-holding.

79. (*1*) A non-occupancy-raiyat shall be entitled to construct, maintain and repair a well for the irrigation of his holding, with all

Improvements. works incidental thereto, and to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

(2) A non-occupancy-raiyat who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

[Section 91.]

Registration of landlord's improvements.

80. (1) A landlord may, by application to such Revenue officer as the Local Government may appoint, register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted a tenant in making.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the Local Government from time to time by rule directs.

(3) The officer receiving the application may reject it if it has not been made within twelve months—

(*a*) in the case of improvements made before the commencement of this Act—from the commencement of this Act;

(*b*) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

[Section 92.]

Application to record evidence as to improvement.

81. (1) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in any subsequent proceedings between the landlord and tenant or any persons claiming under them.

C. B., ss. 20 (*a*) and 29. Section 93.]

Compensation for raiyats' improvements.

82. (1) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

(2) Whenever a Court makes a decree or order for the ejectment of a raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the raiyat. *Improv*

(3) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a raiyat between the 2nd day of March, 1883, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

(5) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

[Section

Principle on which compensation is to be estimated.

83. (1) In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had—

(*a*) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;

(*b*) to the condition of the improvement, and the probable duration of its effects;

(*c*) to the labour and capital required for the making of such an improvement;

(*d*) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement; and

(*e*) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and raiyat agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

Acquisition of land for building and other purposes.

Acquisition of land for building and other purposes.

84. A Civil Court may, on the application of the landlord of a holding, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational or charitable purpose, and on being satisfied on the certificate of the Collector that the purpose is reasonable and suffi- *Acquisi of land building other p pose*

cient, authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

Sub-letting.

85. (*1*) If a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent.

Restrictions on sub-letting.

(*2*) A sub-lease by a raiyat shall not be admitted to registration if it purports to create a term exceeding nine years.

(*3*) Where a raiyat has without the consent of his landlord granted a sub-lease by an instrument registered before the commencement of this Act, the sub-lease shall not be valid for more than nine years from the commencement of this Act.

Surrender and abandonment.

86. (*1*) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

Surrender.

(*2*) But, notwithstanding the surrender, the raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(*3*) When a raiyat has surrendered his holding the Court shall in the following cases for the purposes of sub-section (*2*) presume, until the contrary is shown, that such notice was so given, namely:—

(*a*) if the raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(*b*) if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(*4*) The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(*5*) When a raiyat has surrendered his holding the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(*6*) When a holding is subject to an incumbrance secured by a registered instrument, the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer.

(*7*) Save as provided in the foregoing sub-section, nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

Surrender and abandonment

87. (*1*) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

Abandonment.

[D. § 12 (4). C.B., s. 79 (4). B.B., s. 72 (4). Section 96.]

(*2*) Before a landlord enters under this section he shall file a notice in the prescribed form in the Collector's office stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Collector shall cause the notice to be published in such manner as the Local Government by rule directs.

(*3*) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(*4*) Where the whole or part of a holding has been sub-let by a registered instrument, the landlord shall, before entering under this section on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the raiyat who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that raiyat. If the sub-lessee refuses or neglects within a reasonable time to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (*1*) and (*2*).

Sub-division of tenancy.

88. A division of a tenure or holding or distribution of the rent payable in respect thereof shall not be binding on the landlord unless it is made with his consent in writing.

Sub-division of tenancy.

Division of tenancy not binding on landlord without his consent.

[B. B., ss. 21 (5), 37. Bengal Act VIII of 1869, s. 26. Section 97.]

Bengal Tenancy Bill.

(*Chapter IX.—Miscellaneous Provisions as to Landlords and Tenants.—Secs. 89—96.*)

Ejectment.

Ejectment. [C. B., s. 79 (5), (6) & (7). B. B., s. 73 (5), (6) and (7). Section 98.]

89. No tenant shall be ejected from his holding except in execution of a decree.

No ejectment except in execution of decree.

Measurements.

Measurements. [D. § 58. C. B., s. 75. B. B., s. 67. Section 99.]

90. (*1*) Subject to the provisions of this section and any contract, a landlord may, by himself, or by any person authorized by him on this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue.

Landlord's right to measure land.

(*2*) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases :—

(*a*) where the area of the holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area ;

(*b*) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation;

(*c*) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

(*3*) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

[D. § 94. B. B., ss. 176 & 177. Section 100].

91. (*1*) Where a landlord desires to measure any land which he is entitled to measure under the last foregoing section, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

Power for Court to order tenant to attend and point out boundaries.

(*2*) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

[D. § 94 (*a*). C. B., s. 76(*a*). B. B., s. 68 (*a*). Section 101.]

92. (*1*) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard.

Standard of measurement.

(*2*) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

Measure

(*3*) The Local Government may, after local enquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area, and every declaration so made shall be presumed to be correct until the contrary is shown.

[D. § C. B., B. B.,

Managers.

Mana

93. When any dispute exists between co-owners of an estate or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue,

[D. § C. B., B. B., (1). Section

Power to call upon co-owners to show cause why they should not appoint a common manager.

(*a*) inconvenience to the public, or

(*b*) injury to private rights,

the District Judge may, on the application in case (*a*) of the Collector, and in case (*b*) of any one having an interest in the estate or tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager:

Provided that a co-owner of an estate or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876.

VII (B. of 187 [C. B., s. (2). B. B., s. (2). Section

94. If the co-owners fail to show cause as aforesaid within one month after service of a notice under the last foregoing section, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

Power to order them to appoint a manager if cause is not shown.

95. If the co-owners do not, within such period, not being less than one month after the making of an order under the last foregoing section, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

[C. B., s. (1). B. B., s. (1). Section

Power to appoint manager if order is not obeyed.

(*a*) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof; or

(*b*) in any case appoint a manager.

96. The Local Government may nominate a person for any local area to manage all estates and tenures within that local area for which it may be

[C. B., s. (2). B. B., s. (2). Section

Power to nominate person to act in all cases under clause (*b*) of last section.

necessary to appoint a manager under clause (*b*) of the last foregoing section; and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge, unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

The Court of Wards Act, 1879, applicable to management by Court of Wards.

97. In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immoveable property shall apply to the management.

Provisions applicable to manager.

98. (*1*) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge from time to time directs.

(*2*) He shall give such security for the proper discharge of his duties as the District Judge directs.

(*3*) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

(*4*) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(*5*) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(*6*) He shall pass his accounts at such period and in such form as the District Judge may direct.

(*7*) He may make any application which the proprietors could make under section 103.

(*8*) He shall be removeable by the order of the District Judge, and not otherwise.

Power to restore management to co-owners.

99. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 95, the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

Power to make rules.

100. The High Court may from time to time make rules defining the powers and duties of managers under the foregoing sections.

CHAPTER X.

Record-of-rights and Settlement of Rents.

[Sections 110 & 117.]

Power to order preparation of record-of-rights.

101. (*1*) The Local Government may, in any case with the previous sanction of the Governor General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an order directing that a survey be made, and a record-of-rights be prepared, in respect of the lands in a local area by a Revenue-officer.

(*2*) The cases in which an order may be made under this section without the previous sanction of the Governor General in Council are the following, namely:—

(*a*) where the landlord or a large proportion of the landlords or of the tenants applies for such an order and deposits, or gives security for, such amount, for the payment of expenses, as the Local Government directs;

(*b*) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally;

(*c*) where the local area is comprised in an estate or tenure which belongs to or is managed by the Government or the Court of Wards; and

(*d*) where a settlement of revenue is being made in respect of the local area.

(*3*) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

[Sections 111 & 118 (*1*).]

Particulars to be recorded.

102. Where an order is made under the last foregoing section, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely:—

(*a*) the name of each tenant;

(*b*) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;

(*c*) the situation, quantity and boundaries of the land held by him;

(*d*) the name of his landlord;

(*e*) the rent payable;

(*f*) the mode in which that rent has been fixed, whether by contract, by order of a Court, or otherwise;

(*g*) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;

(*h*) the special conditions and incidents, if any, of the tenancy.

[Section 112.] **103.** On the application of a proprietor or tenure-holder, and on his depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record the particulars specified in the last foregoing section with respect to the estate or tenure or any part thereof.

Power for Revenue-officer to record particulars on application of proprietor or tenure-holder.

[Section 113 (3).] **104.** (*1*) When, in any proceeding under this chapter, it does not appear that the tenant is holding land in excess of or less than that for which he is paying rent, and neither the landlord nor the tenant applies for a settlement of rent, the officer shall record the rent payable by the tenant, and the land in respect of which the rent is payable.

Procedure as to recording or settling rents.

(*2*) When it appears that a tenant is holding land in excess of, or less than, that for which he is paying rent, or either the landlord or the tenant applies for a settlement of rent, or in any case under section 101, sub-section (*2*), clause (*d*), the officer shall settle a fair and equitable rent in respect of the land held by the tenant.

[Section 113 (4).] (*3*) In settling rents under this section, the officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents.

[Sections 113 & 115 (7).] **105.** (*1*) When the Revenue-officer has completed a record made under this chapter, he shall cause a draft thereof to be locally published in the prescribed manner and for the prescribed period, and shall receive and consider any objection which may be made to any entry therein during the period of publication.

Publication of record.

(*2*) After the expiration of this period the Revenue-officer shall finally frame the record, and shall cause it to be locally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this chapter.

[Sections 114 & 115 (2).] **106.** If at any time before the final publication of the record under the last foregoing section a dispute arises as to the correctness of any entry (not being an entry of a rent settled under this chapter), or as to the propriety of any omission, which the Revenue-officer proposes to make or has made therein or therefrom, the Revenue-officer shall hear and decide the dispute.

Procedure in case of dispute as to entries in record.

107. In all proceedings for the settlement of rents under this chapter, and in all proceedings under the last foregoing section, the Revenue-officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits, and his decision in every such proceeding shall have the force of a decree.

Procedure to be adopted by Revenue-officer.

108. (*1*) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under the last foregoing section.

Appeals from decisions of Revenue-officers.

(*2*) An appeal shall lie to the Special Judge from the decision of a Revenue-officer under the last foregoing section, and the provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

(*3*) Subject to the provisions of Chapter XLII of the Code of Civil Procedure, an appeal shall lie to the High Court from the decision of a Special Judge in any case under section 106 as if he were a Court subordinate to the High Court within the meaning of the first section of that chapter:

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any holding has been settled, the Court may settle a new rent for the holding, but in so doing shall be guided by the rents of the other holdings of the same class comprised in the same record as ascertained or settled under section 104.

109. (*1*) Every record made under this chapter shall distinguish between the disputed and the undisputed entries therein.

Undisputed entries in record to be presumptive evidence.

(*2*) Every undisputed entry in the record shall be presumed to be correct until the contrary is proved.

110. When any rent is settled under this chapter, the settlement shall take effect from the beginning of the agricultural year next after the final publication of the record.

Time at which settlement of rent is to take effect.

111. When an order has been made under section 101,—

Stay of proceedings in Civil Court during preparation of record.

(*a*) a Civil Court shall not, until the final publication of the record, entertain a suit or application for the alteration of the rent or the determination of the status of any tenant in the area to which the order applies; and

(*b*) the High Court may, if it thinks fit, transfer to the Revenue-officer any proceedings pending in a local Court for the alteration of any such rent or for the determination of any of the matters specified or referred to in section 102.

Bengal Tenancy Bill.

(Chapter X.—Record-of-rights and Settlement of Rents.—Secs. 112-115.)

(Chaper XI.—Record of Proprietors' Private Lands.—Secs. 116-120.)

(Chapter XII.—Distraint.—Sec. 121.)

Power to authorise a special settlement in special cases.

112. (*1*) The Local Government, with the previous sanction of the Governor General in Council, may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, invest a Revenue-officer acting under this chapter with the following powers or either of them, namely:—

(*a*) power to settle all rents;

(*b*) power, when settling rents, to reduce rents if in the opinion of the officer the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(*2*) The powers given under this section may be made exercisable within a specified area either generally or with reference to specified cases or classes of cases.

Period for which rents as settled are to remain unaltered.

113. When the rent of a tenure or holding is settled under this chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding for fifteen years, and in the case of a non-occupancy-holding, if the rent is settled in any case under section 112 or on the application of the landlord under section 104, for five years. The periods of fifteen and five years shall be counted from the date of the final publication of the record.

Expenses of proceedings under chapter.

114. Where an order is made under this chapter in any case except under section 101, sub-section (*2*), clause (*d*), the expenses incurred by the Government in carrying out the provisions of this chapter in any local area, or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area, in such proportions as the Local Government, having regard to all the circumstances of each case, may determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable by the Government from him as if it were an arrear of revenue due by him.

Presumption as to fixity of rent not to apply where record has been prepared.

115. When the particulars mentioned in section 102, clause (*b*), have been recorded under this chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

CHAPTER XI.

Record of Proprietors' Private Lands.

Saving as to khámár land.

116. Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, a proprietor's private lands known in Bengal as khámár, nij or nij-jot, and in Behar as zirát, nij, sír or kamat, where any such land is held under a lease for a term of years or under a lease from year to year. [B. B., s. 19. Expl. III(*b*). Expl. IV(*f*). Section 30.]

Power for Government to order survey and record of proprietor's private lands.

117. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of the last foregoing section. [B.B., ss. 76 to 82. Section 135.]

Power for Revenue-officer to record private land on application of proprietor or tenant.

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land. [Section 136.]

Procedure for recording private land.

119. When a Revenue-officer proceeds under either of the two last foregoing sections, the provisions of sections 105, 106, 108 and 109 shall apply. [Section 137.]

Rules for determination of proprietor's private land.

120. (*1*) The Revenue-officer shall record as a proprietor's private land— [C. B., s. 81. B B., ss. 3 & 75. Section 138.]

(*a*) land which is proved to have been cultivated as khámár, zirát, sír, nij, nij-jot or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognized by village usage as proprietor's khámár, zirát, sír, nij, nij-jot or kamat.

(*2*) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

(*3*) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

CHAPTER XII.

Distraint.

Cases in which an application for distraint may be made.

121. Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no [B. B., ss. 101, 104, 139. Section 139.]

security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining, while in the possession of the cultivator—

(*a*) any crops or other products of the earth standing or ungathered on the holding;

(*b*) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead:

Provided that an application shall not be made under this section—

VII (B.C.) of 1876.

(*1*) by a proprietor or manager as defined under the Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act; or

(*2*) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed; or

[B. B., ss. 21, 25.]

(*3*) in respect of the produce of any part of the holding which the tenant has sub-let with the written consent of the landlord.

[B. B., ss. 104 & 105. Section 140.]

122. (*1*) Every application under the last foregoing section shall specify—

Form of application.

(*a*) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification;

(*b*) the name of the tenant;

(*c*) the period in respect of which the arrear is claimed;

(*d*) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding, as the case may be, under which that amount is payable;

(*e*) the nature and approximate value of the produce to be distrained;

(*f*) the place where it is to be found, or such other particulars as may suffice for its identification; and

(*g*) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

(*2*) The application shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints.

XI 18

123. (*1*) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

(B. 105 Sec

Procedure on receipt of application.

(*2*) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(*3*) Where a Court cannot forthwith admit or reject an application under sub-section (*2*), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(*4*) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may if it thinks fit make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

124. If an application is admitted under the last foregoing section, the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court:

[B.B. Section

Execution of order of distraint.

Provided that produce which from its nature does not admit of being stored shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering.

[D.

125. (*1*) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made.

[B.B. Sect

Service of demand and account.

(*2*) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(*3*) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer

Bengal Tenancy Bill.

(*Chapter XII.—Distraint.—Secs. 126—136.*)

shall affix copies of the demand and account on the outer door of the house in which he usually resides.

s. 109 146.] **126.** (*1*) A distraint under this chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation.

Right to reap, &c., produce.

(*2*) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(*3*) In either case the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

s. 113. 145.] **127.** (*1*) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained and the demand for which it is distrained, and notifying that he will, at a place and on a specified day, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction :

Sale proclamation to be issued unless demand is satisfied.

Provided that when the crops or products distrained from their nature admit of being stored but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(*2*) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

s. 114. 146.] **128.** The sale shall be held at the place where the distrained property is, or at the nearest place of public resort if the distraining officer is of opinion that it is likely to sell there to better advantage.

Place of sale.

111. 147.] **129.** (*1*) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing.

When produce may be sold standing.

(*2*) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

130. The property shall be sold by public auction in one or more lots, as the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder. [B. B., s. 115. Section 148.]

Manner of sale.

131. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorised to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property. [B. B., s. 116. Section 149.]

Postponement of sale.

132. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold. [B. B., s. 117. Section 150.]

Payment of purchase-money.

133. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid. [B. B., s. 118. Section 151.]

Certificate to be given to purchaser.

134. (*1*) From the proceeds of every sale of distrained property under this chapter, the officer holding the sale shall pay the costs of the distraint and sale, calculated on a scale of charges prescribed by rules to be made by the Local Government in this behalf. [B. B., s. 119. Section 152.]

Proceeds of sale how to be applied.

(*2*) The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

135. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers. [B. B., s. 120. Section 153.]

Certain officers may not purchase.

136. (*1*) If at any time after a distraint has been made under this chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 125, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same and the distraint shall forthwith be withdrawn. [B. B., ss. 111, 112 & 123. Section 154.]

Procedure where demand is paid before the sale.

(2) When the distraining officer receives the deposit, he shall forthwith pay it into the Court.

(3) A receipt granted under this section to an owner of distrained property not being the defaulter shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(4) After the expiration of one month from the date of a deposit being made under this section, the Court shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

(5) A landlord shall not be deemed to have consented to his tenant's sub-letting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant.

[B. B., s. 124, Section 155.]

Amount paid by under-tenant for his lessor may be deducted from rent.

137. (1) When an inferior tenant, on his property being lawfully distrained under this chapter for the default of a superior tenant, makes any payment under the last foregoing section, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under the last foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

[B. B., s. 126, Section 156.]

Conflict between rights of superior and inferior landlords.

138. When land is sub-let, and any conflict arises under this chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

[Section 157.]

Distraint of property which is under attachment.

139. When any conflict arises between an order for distraint issued under this chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid under section 134 to the owner of the property without the sanction of the Court by which the order of attachment or sale was issued.

[Section 158.]

Suit for compensation for wrongful distraint.

140. No appeal shall lie from any order passed by a Civil Court under this chapter; but any person whose property is distrained on an application made under section 121 in any case in which such an application is not permitted by that section may institute a suit against the applicant for the recovery of compensation.

Power for Local Government to authorise distraint in certain cases.

141. (1) When the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application to the Civil Courts under this chapter, it may, from time to time, by order, authorize the landlord to distrain, by himself or his agent, any produce for the distraint of which he would be entitled to apply to the Civil Court under this chapter:

Provided that every person distraining any produce under such authorization shall proceed in the manner prescribed by section 124, and shall forthwith give notice, in such form as the High Court may, by rule prescribe, to the Civil Court having jurisdiction to entertain an application for distraining the produce, and that Court shall, with no avoidable delay, depute an officer to take charge of the produce distrained.

(2) When an officer of the Court has taken charge of any distrained produce under this section, the proceedings shall thereafter be conducted in all respects as if he had distrained it under section 124.

(3) The Local Government may at any time rescind any order made by it under this section.

Power for High Court to make rules.

142. The High Court may from time to time make rules consistent with this Act for regulating the procedure in all cases under this chapter.

CHAPTER XIII.

JUDICIAL PROCEDURE.

[Section

Power to modify Civil Procedure Code in application to landlord and tenant suits.

143. (1) The High Court may, from time to time, with the approval of the Governor General in Council, make rules consistent with this Act declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

XIV 1882.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure shall apply to all such suits.

XIV 1882.

[Section

Jurisdiction in proceedings under Act.

144. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought.

XIV 1882.

(2) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall

be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

Náibs or gumáshtas to be recognized agents.

145. Every náib or gumáshta of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending.

Special register of suits.

146. The particulars referred to in section 58 of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court, in such form as the Local Government may from time to time prescribe in this behalf.

Successive rent-suits.

147. Subject to the provisions of section 373 of the Code of Civil Procedure, where a landlord has instituted a suit against a raiyat for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit.

Procedure in rent-suits.

148. The following rules shall apply to suits for the recovery of rent:—

(*a*) sections 121 to 127 (both inclusive), 129, 305, and 320 to 326 (both inclusive) of the Code of Civil Procedure shall not apply to any such suit;

(*b*) the plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent, and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification;

(*c*) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only;

(*d*) the service of the summons may, if the High Court by rule, either generally, or specially for any local area, so directs, be effected, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III of the Indian Post Office Act, 1866; when a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served;

(*e*) a written statement shall not be filed without the leave of the Court; [D., § 108. C. B., s. 184. B. B., s. 206.]

(*f*) the rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure shall apply, whether an appeal is allowed or not; [BB., s. 214.] **XIV of 1882.**

(*g*) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears; [D., §§ 177 & 223. C. B., ss. 155 & 197. B. B., ss. 171 & 219.]

(*h*) notwithstanding anything contained in section 232 of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him. [C. B., s. 198. B. B., s. 220.] **XIV of 1882.**

Payment into Court of money admitted to be due to third person.

149. (*1*) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due. [Section 164.]

(*2*) Where such a payment is made the Court shall forthwith cause notice of the payment to be served on the third person.

(*3*) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(*4*) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (*3*).

Payment into Court of money admitted to be due to landlord.

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due. [Section 165.]

Provision as to payment of portion of money.

151. When a defendant is liable to pay money into Court under either of the two last foregoing sections, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs. [Section 166.]

[Section 167.]

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person as the case may be.

Court to grant receipt.

[D., § 179. C.B., ss. 157 & 220. B. B., ss. 173 & 242. Section 168.]

153. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

Appeals in rent-suits.

(*a*) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

(*b*) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees ;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant :

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity ; and may pass such order as the District Judge thinks fit.

[C. B., ss. 96 & 98 (5). B. B., ss. 128 & 130, cl. (5). Section 169.]

154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following ; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following ; but nothing in this section shall prevent the Court from fixing for special reasons a later date from which any such decree shall take effect.

Date from which decree for enhancement takes effect.

[B. B., ss. 21 (*c*), 31, 44 & 45 Vic., C. 41, s. 14. Section 170.]

155. (*1*) A suit for the ejectment of a tenant, on the ground—

Relief against forfeitures.

(*a*) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(*b*) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment,

shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(*2*) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(*3*) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (*2*).

(*4*) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

[C. B., B. B., Section

156. The following rules shall apply in the case of every raiyat ejected from a holding :—

Rights of ejected raiyats in respect of crops and land prepared for sowing.

(*a*) when the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment ;

(*b*) when the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value ;

(*c*) but a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of pro-

ceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage;

[80, 73.] (*d*) if the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

[173.] **157.** When a plaintiff institutes a suit for the ejectment of a trespasser he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

Power for Court to fix fair rent as alternative to ejectment.

[161. 168. 174.] **158.** (*1*) The Court having jurisdiction to determine a suit for the possession of land held by a tenant may, on the application of either the landlord or the tenant, determine all or any of the following matters, namely:—

Application to determine incidents of tenancy.

(*a*) the situation, quantity and boundaries of the land held by the tenant;

(*b*) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not and whether his rent is liable to enhancement during the continuance of his tenure; and

(*c*) the rent payable by him at the time of the application.

(*2*) If in the opinion of the Court any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rule made under section 392 of the said Code.

(*3*) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

[176.] **159.** Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as "protected interests", but with power to annul the interests defined in this chapter as "incumbrances;"

General powers of purchaser as to avoidance of incumbrances.

Provided as follows:—

(*a*) a registered and notified incumbrance within the meaning of this chapter shall not be so annulled except in the case hereinafter mentioned in that behalf;

(*b*) the power to annul shall be exercisable only in manner by this chapter directed.

[D., §§ 12 (11) and 155. C. B., ss. 226, Expl., & 210. B. B., ss 228, Expl., & 232. Section 176.]

160. The following shall be deemed to be protected interests within the meaning of this chapter—

Protected interests.

(*a*) any under-tenure existing from the time of the Permanent Settlement;

(*b*) any under-tenure recognized by the settlement proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;

(*c*) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made;

(*d*) any right of occupancy;

(*e*) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer;

(*f*) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and

(*g*) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

[Section 177.]

Meaning of "incumbrance" and "registered and notified incumbrance."

161. For the purposes of this chapter—

(*a*) the term "incumbrance", used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section;

(*b*) the term "registered and notified incumbrance", used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided.

[C. B., s. 208, Expl. B. B., s. 228, Expl.]

[C. B. s. 201. B. B., s. 223. Section 178.]

Application for sale of tenure or holding.

162. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under section 235 of the Code of Civil Procedure for the attach-

XIV of 1882.

Bengal Tenancy Bill.

(*Chapter XIV.—Sale for Arrears under Decree.—Secs. 163—168.*)

ment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the parganná, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

[D. § 152. C. B., s. 203. B. B., s. 225. Section 179.] XIV of 1882.

163. (*1*) Notwithstanding anything contained in the Code of Civil Procedure, when the decree-holder makes the application mentioned in the last foregoing section, the Court shall, if under section 245 of the said Code it admits the application and orders execution of the decree as applied for, issue simultaneously the order of attachment and the proclamation required by section 287 of the said Code.

Attachment and proclamation of sale to be issued simultaneously.

(*2*) The proclamation shall, in addition to stating and specifying the particulars mentioned in section 287 of the said Code, announce—

(*a*) in the case of a tenure or a holding of a raiyat holding at fixed rates, that the tenure or holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and

(*b*) in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

(*3*) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code, be published by fixing up a copy thereof in a conspicuous place on the land comprised in the tenure or holding ordered to be sold, and shall also be published in such manner as the Local Government may, from time to time, direct in this behalf.

(*4*) Notwithstanding anything contained in section 290 of the said Code, the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

[C. B., s. 206. B. B., s. 226 (*a*) and Expl. Section 180.]

164. (*1*) When a tenure or a holding at fixed rates has been advertised for sale under the last foregoing section, it shall be put up to auction, subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

Sale of tenure or holding subject to registered and notified incumbrances, and effect thereof.

(*2*) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

165. (*1*) If the bidding for a tenure or a holding at fixed rates put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure, announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

[C. B. B. Section (1).]

Sale of tenure or holding with power to avoid all incumbrances, and effect thereof.

XIV 1882.

(*2*) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

[D. C. B. B.

166. (*1*) When an occupancy-holding has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances.

[B. B. cl. (*b*). Section

Sale of occupancy-holding with power to avoid all incumbrances, and effect thereof.

(*2*) The purchaser at a sale under this section may in manner provided by the next following section, and not otherwise, annul any incumbrance on the holding.

167. (*1*) A purchaser having power to annul an incumbrance under any of the foregoing sections and desiring to annul the same, may, within one year from the date of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

[Secti

Procedure for annulling incumbrances under the foregoing sections.

(*2*) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(*3*) When an application for service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

168. (*1*) The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and

[B.B. (*c*). Secti

Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.

notified incumbrances, and may by like notification rescind any such direction.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under the foregoing sections of this chapter, be treated in all respects as if they were tenures.

Rules for disposal of the sale-proceeds.

169. (1) In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say:—

(a) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale;

(b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;

(c) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the sale;

(d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.

Tenure or holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder.

170. (1) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

(2) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor or any person having in the tenure or holding any interest voidable on the sale may pay money into Court under this section.

Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the holding.

171. (1) When any person having, in a tenure or holding advertised for sale under this chapter, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,— [D., §§ 35,36, 154. C. B., s. 205. B. B., s. 227. Section 188.]

(a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per centum per annum and secured by a mortgage of the tenure or holding to him;

(b) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent; and

(c) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

Inferior tenant paying into Court may deduct from rent.

172. When a tenure or holding is advertised for sale under this chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached. [D., §§ 35, 36, 154. C. B., s. 205. B. B., s. 227. Section 189.]

Decree-holder may bid at sale; judgment-debtor may not.

173. (1) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a holding is sold under this chapter may, without the permission of the Court, bid for or purchase the tenure or holding. XIV of 1882. [C. B., s. 208 (1). B. B., s. 230 (1). Section 190.]

(2) The judgment-debtor shall not bid for or purchase a holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale, and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the judgment-debtor.

Application by judgment-debtor to set aside sale.

174. (1) Where a tenure or holding is sold for an arrear of rent due thereon, then, at any time within thirty days from the date of sale, the judgment-debtor may apply to have the sale set aside, on his depositing in Court, for payment to the decree-holder, the amount recoverable

under the decree with costs, and, for payment to the purchaser, a sum equalto five per cent. of the purchase-money.

(2) If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale:

XIV of 1882. Provided that, if a judgment-debtor applies under section 311 of the Code of Civil Procedure to set aside the sale of his tenure or holding, he shall not be entitled to make an application under this section.

[Section 191.] XIV of 1882. (3) Section 313 of the Code of Civil Procedure shall not apply to any sale under this chapter.

[Section 192.] **175.** Notwithstanding anything contained in Part IV of the Indian Registration Act, 1877, an instrument creating an incumbrance upon any tenure or holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

Registration of certain instruments creating incumbrances.

III of 1877.

[C. B., s. 206, Expl. B.B., s. 2, Expl. Section 193.] **176.** Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

Notification of incumbrances to landlord.

177. Nothing contained in this chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

Power to create incumbrances not extended.

CHAPTER XV.

CONTRACT AND CUSTOM.

[Section 210.] **178.** (1) Nothing in any contract between a landlord and tenant made before or after the passing of this Act—

Restrictions on exclusion of Act by agreement.

(a) shall bar in perpetuity the acquisition of an occupancy-right in land, or

(b) shall take away an occupancy-right in existence at the date of the contract, or

(c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

(d) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

(2) Nothing in any contract made between a landlord and tenant since the 15th day of July, 1880, and before the passing of this Act shall prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land.

(3) Nothing in any contract made between a landlord and tenant after the passing of this Act shall—

(a) prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land;

(b) take away or limit the right of an occupancy-raiyat to use land as provided by section 23;

(c) take away the right of a raiyat to surrender his holding in accordance with section 86;

(d) take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage;

(e) take away the right of a raiyat to sub-let subject to and in accordance with the provisions of this Act;

(f) take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52;

(g) take away the right of a landlord or tenant to apply for a commutation of rent under section 40; or

(h) affect the provisions of section 67 relating to interest payable on arrears of rent:

Provided as follows:—

(i) nothing in this section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would under Chapter V be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;

(ii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of orchard land with agricultural crops.

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent mukarrarí lease on any terms agreed on between him and his tenant.

Permanent mukarrarí leases.

[Section 193.]

Útbandi, chur and dearah lands.

180. (1) Notwithstanding anything in this Act, a raiyat—

(a) who in any part of the country where the custom of útbandi prevails, holds land ordi-

narily let under that custom and for the time being let under that custom, and

(*b*) who holds land of the kind known as chur or dearah,—

shall not acquire a right of occupancy—

in case (*a*), in land ordinarily held under the custom of útbandi and for the time being held under that custom,

in case (*b*), in the chur or dearah land—

until he has held the land in question for twelve continuous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(*2*) Chapter VI shall not apply to raiyats holding land under the custom of útbandi in respect of land held by them under that custom.

(*3*) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, declare that any land has ceased to be chur or dearah land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

215.] **181.** Nothing in this Act shall affect any incident of a ghátwáli or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

Saving as to service-tenures.

216.] **182.** When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

Homesteads.

217.] **183.** Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Saving of custom.

Illustrations.

(1) A usage under which a raiyat is entitled to sell his holding without the consent of his landlord is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act.

s. 18, (*f*), s. 19, (*e*),

(2) The custom or usage that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

CHAPTER XVI.

LIMITATION.

[D., §§ 77, 78 & 79. C. B., s. 93. B. B., s. 98. Section 218.]

184. (*1*) The suits, appeals and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

Limitation in suits, appeals and applications in Schedule III.

(*2*) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

[C. B., s. 93. B. B., s. 99. Section 219.]

185. Sections 7, 8 and 9 of the Indian Limitation Act, 1877, shall not apply to the suits and applications mentioned in the last foregoing section.

XV of 1877.

Portions of the Indian Limitation Act not applicable to such suits, &c.

CHAPTER XVII.

SUPPLEMENTAL.

Penalties.

Penalties [B. B., ss. 91, 122. Section 220.]

186. (*1*) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,—

(*a*) distrains or attempts to distrain the produce of a tenant's holding, or

(*b*) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or

(*c*) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

XLV of 1860.

Penalties for illegal interference with produce.

(*2*) Any person who abets within the meaning of the Indian Penal Code the doing of any act mentioned in sub-section (*1*) shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

XLV of 1860.

Agents and representatives of landlords.

[Section 221 *Agents and representatives of landlords to*

187. (*1*) Any appearance, application or act, in, before or to any Court or authority, required or authorised by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

Power for landlord to act through agent.

Agents and representatives of landlords.

(2) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

[Section 222.]

Joint-landlords to act collectively or by common agent.

188. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

Rules under Act.

[Section 223.] *Rules under Act.*

Power to make rules regarding procedure, powers of officers and service of notices.

189. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

(1) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

(a) any power exercised by a Civil Court in the trial of suits;

(b) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exerciseable by any officer under the Bengal Survey Act, 1875; and

V (B. C.) of 1875.

(c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil; and

(2) to prescribe the mode of service of notices under this Act where no mode is prescribed by this or any other Act.

[Section 224.]

Procedure for making, publication and confirmation of rules.

190. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner:

Provided that every such draft shall be published in the official Gazette.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(6) All rules made under this Act may, from time to time, be amended, added to or cancelled by the authority having power to make the same.

Provisions as to temporarily-settled districts.

Saving as to land held in a district not permanently settled.

191. Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a particular rate of rent has been expressly recognized in settlement-proceedings by a Revenue-authority empowered by the Government to make definitively or confirm settlements.

Power to alter rent in case of new assessment of revenue.

192. When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a particular rent, and while the lease or contract is in force—

(a) land-revenue is for the first time made payable in respect of the land, or

(b) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

Rights of pasturage, &c.

Rights of pasturage, forest-rights, &c.

193. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like.

Saving for conditions binding on landlords.

Tenant not enabled by Act to violate conditions binding on landlord.

194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing

in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition.

Savings for special enactments.

Savings for special enactments.

195. Nothing in this Act shall affect—

(*a*) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;

(*b*) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue-authorities;

(*c*) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue;

(*d*) any enactment relating to the partition of revenue-paying estates;

(*e*) any enactment relating to patní tenures which is not expressly repealed by this Act; or

(*f*) any other special or local law not repealed either expressly or by necessary implication by this Act.

Construction of Act.

Act to be read subject to Acts hereafter passed by Lieutenant-Governor of Bengal in Council.

196. This Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council.

SCHEDULE I.

(*See section 2.*)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

Number and year.	Subject of Regulation.	Extent of repeal.
VIII of 1793	A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zamíndárs, independent talúqdárs and other actual proprietors of land in Bengal, Behar and Orissa, passed for those Provinces respectively on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64 and 65.
XII of 1805	A Regulation for the settlement and collection of the Public Revenue in the zila of Cuttack, including the pargunas of Pattáspur, Kummudichour, and Bagrae, at present included in the zila of Midnapur.	Section 7.

SCHEDULE I—*contd.*

Number and year.	Subject of Regulation.	Extent of repeal.
V of 1812	A Regulation for amending some of the rules at present in force for the collection of the Land-revenue.	Sections 2, 3, 4, 26 and 27.
XVIII of 1812	A Regulation for explaining Section 2, Regulation V, 1812, and rescinding Sections 3 and 4, Regulation XLIV, 1793, and Sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
XI of 1825	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause.

Acts of the Bengal Council.

Number and year.	Subject of Act.	Extent of repeal.
VI of 1862	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
IV of 1867	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII of 1869	An Act to amend the Procedure in suits between Landlords and Tenants.	The whole Act.
VIII of 1879	An Act to define and limit the powers of Settlement-officers.	The whole Act.

Act of the Governor General in Council.

Number and year.	Subject of Act.	Extent of repeal.
X of 1859	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

Bengal Tenancy Bill.

(Schedule II.—Forms of Receipt and Account.)

SCHEDULE II.

FORMS OF RECEIPT AND ACCOUNT.

(See sections 56 and 57.)

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (LANDLORD'S PORTION).

1. Serial number of Receipt

2. Estate ; Village ; Thánd

3. Tenant's name , Son of

4. Particulars of the holding—

Nukdi, Bighás ; rent Rs.

Baouli, Bighás ; Maunds ; or Rs.

Julkur, Rs.
Bunkur, Rs.
Phulkur, Rs.

Government Cesses { Road Cess, Rs. / Public Works Cess, Rs.

5. Signature of the Landlord or his Authorized Agent

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (RAIYAT'S PORTION).

1. Serial number of Receipt

2. Estate ; Village ; Thánd

3. Tenant's name , Son of

4. Particulars of the holding—

Nukdi, Bighás ; rent Rs.

Baouli, Bighás ; Maunds ; or Rs.

Julkur, Rs.
Bunkur, Rs.
Phulkur, Rs.

Government Cesses { Road Cess, Rs. / Public Works Cess, Rs.

5. Signature of the Landlord or his Authorized Agent

Section 55 of the Bengal Tenancy Act, 1885, provides as follows:—

(1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

Bengal Tenancy Bill.

(Schedule II.—Forms of Receipt and Account.)

DETAILS OF PAYMENTS (LANDLORD'S PART).

Date of payment, and name of person through whom paid.	Nukdi.		Baoli.		Jukra, &c.		Cesses.		Signature of the landlord or his authorized agent.
	Current on account of kist.	Arrear on account of year, kist.	Current on account of crop.	Arrear on account of year, crop.	Current on account of kist.	Arrear on account of year, kist.	Current on account of kist.	Arrear on account of year, kist.	

DETAILS OF PAYMENTS (RAIYAT'S PART).

Date of payment, and name of person through whom paid.	Nukdi.		Baoli.		Jukra, &c.		Cesses.		Signature of the landlord or his authorized agent.
	Current on account of kist.	Arrear on account of year, kist.	Current on account of crop.	Arrear on account of year, crop.	Current on account of kist.	Arrear on account of year, kist.	Current on account of kist.	Arrear on account of year, kist.	

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighás	Rate	Rs. A. P.
Nukdi			
Government Cesses			

	Bighás	Maunds	Rs. A. P.
Baouli			
Julkur		...	
Bunkur		...	
Phulkur		...	

	Maunds	Rs. A. P.
4. Demand of the year	...	
5 Balance of former years (Bakaya) ...	...	
		Rs. A. P.
6. Total demand (current and arrear) ...	...	
7. Paid each on account of { Current demand	...	
{ Arrear demand	...	
	Maunds	
8. Paid in kind	...	
		Rs. A. P.

9. Balance outstanding at end of year
10. Signature of the Landlord or his authorized Agent

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighás	Rate	Rs. A. P.
Nukdi			
Government Cesses			

	Bighás	Maunds	Rs. A. P.
Baouli			
Julkur		...	
Bunkur		...	
Phulkur		...	

	Maunds	Rs. A. P.
4. Demand of the year	...	
5. Balance of former years (Bakaya) ...	...	
		Rs. A. P.
6. Total demand (current and arrear) ...	...	
7. Paid each on account of { Current demand	...	
{ Arrear demand	...	
	Maunds	
8. Paid in kind	...	
		Rs. A. P.

9. Balance outstanding at end of year
10. Signature of the Landlord or his authorized Agent

Bengal Tenancy Bill.
(Schedule III.—Limitation.)

SCHEDULE III.

LIMITATION.

(See section 184.)

PART I.—*Suits.*

Description of Suit.	Period of Limitation.	Time from which period begins to run.
1. To eject any tenure-holder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year .	The date of the breach.
2. For the recovery of an arrear of rent—		
(a) when the arrear fell due before a deposit was made under section 61 on account of the rent of the same holding.	Six months .	The date of the service of notice of the deposit.
(b) in other cases .	Three years .	The last day of the Bengali year in which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails.
3. To recover possession of land claimed by the plaintiff as an occupancy-raiyat.	Two years .	The date of dispossession.

PART II.—*Appeals.*

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
4. From any decree or order under this Act to the Court of a District Judge or Special Judge.	Thirty days .	The date of the decree or order appealed against.
5. From any order of a Collector under this Act to the Commissioner.	Thirty days .	The date of the order appealed against.

PART III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which period begins to run.
6. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree, except where the judgment-debtor has by fraud or force prevented the execution of the decree.	Three years .	(1) The date of the decree or order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decree passed on the review.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India

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CALCUTTA SATURDAY, MARCH 14, 1885.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 14th March, 1885, and is hereby promulgated for general information :—

ACT No. VIII OF 1885.

THE BENGAL TENANCY ACT, 1885.

CONTENTS.

Bengal Tenancy Act.

(*Chapter I.—Preliminary.—Secs. 1-3.*)

An Act to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.

WHEREAS it is expedient to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (*1*) This Act may be called the Bengal Tenancy Act, 1885. Short title.

(*2*) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, appoint in this behalf. Commencement.

(*3*) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Town of Calcutta, the Division of Orissa, and the Scheduled Districts specified in the third Part of the First Schedule of the Scheduled Districts Act, 1874; and the Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, extend the whole or any portion of this Act to the Division of Orissa or any part thereof. Local extent.

2. (*1*) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation. Repeal.

(*2*) When this Act is extended to the Division of Orissa or any part thereof, such of those enactments as are in force in that Division or part, or, where a portion only of this Act is so extended, so much of them as is inconsistent with that portion, shall be repealed in that Division or part.

(*3*) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

(*4*) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

3. In this Act, unless there is something repugnant in the subject or context:— Definitions.

(*1*) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government khás maháls and revenue-free lands not entered in any register.

(*2*) "Proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate.

(*3*) "Tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person.

(*4*) "Landlord" means a person immediately under whom a tenant holds, and includes the Government.

(*5*) "Rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant:

In sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII and Schedule III of this Act, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent.

(*6*) "Pay," "payable" and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery."

(*7*) "Tenure" means the interest of a tenure-holder or an under-tenure-holder.

(*8*) "Permanent tenure" means a tenure which is heritable and which is not held for a limited time.

(*9*) "Holding" means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy.

(*10*) "Village" means an area included in a village map of the revenue-survey within the same exterior boundary, or, where no such maps have been prepared, such area as any officer appointed by the Local Government in this behalf may determine after local inquiry held on such notice as the Local Government considers sufficient for giving information to all persons interested.

(*11*) "Agricultural year" means, where the Bengalí year prevails, the year commencing on the first day of Bysák, where the Faslí or Amlí year

prevails, the year commencing on the first day of Asin, and, where any other year prevails for agricultural purposes, that year.

(*12*) "Permanent Settlement" means the Permanent Settlement of Bengal, Behar and Orissa, made in the year 1793.

(*13*) "Succession" includes both intestate and testamentary succession.

(*14*) "Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to.

(*15*) "Prescribed" means prescribed from time to time by the Local Government by notification in the official Gazette.

(*16*) "Collector" means the Collector of a district or any other officer appointed by the Local Government to discharge any of the functions of a Collector under this Act.

(*17*) "Revenue-officer" in any provision of this Act includes any officer whom the Local Government may appoint by name or by virtue of his office to discharge any of the functions of a Revenue-officer under that provision.

(*18*) "Registered" means registered under any Act for the time being in force for the registration of documents.

CHAPTER II.

CLASSES OF TENANTS.

Classes of tenants.

4. There shall be, for the purposes of this Act, the following classes of tenants, (namely) :—

(1) tenure-holders, including under-tenure-holders,

(2) raiyats, and

(3) under-raiyats, that is to say, tenants holding whether immediately or mediately under raiyats;

and the following classes of raiyats, (namely) :—

(*a*) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,

(*b*) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and

(*c*) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy.

Meaning of "tenure-holder" and "raiyat".

5. (*1*) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

(*2*) "Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(*3*) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(*4*) In determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to—

(*a*) local custom; and

(*b*) the purpose for which the right of tenancy was originally acquired.

(*5*) Where the area held by a tenant exceeds one hundred standard bighás, the tenant shall be presumed to be a tenure-holder until the contrary is shewn.

CHAPTER III.

TENURE-HOLDERS.

Enhancement of rent.

Rules of enhancement of rent.

Tenure held since Permanent Settlement liable to enhancement only in certain cases.

6. Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

(*a*) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or

(*b*) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

Limits of enhancement of rent of tenures.

7. (*1*) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

(*2*) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than ten per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them, and shall have regard to—

(*a*) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and

(*b*) the improvements, if any, made by the tenure-holder or his predecessors in interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

Power to order gradual enhancement.

8. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has been reached.

Rent once enhanced may not be altered for fifteen years.

9. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced.

Other incidents of tenures.

Permanent tenure-holder not liable to ejectment.

10. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected:

Provided that where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

Transfer and transmission of permanent tenure.

11. Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immoveable property.

Other incidents of tenures.

Voluntary transfer of permanent tenure.

12. (1) A transfer of a permanent tenure by sale, gift or mortgage (other than a transfer by sale in execution of a decree or by summary sale under any law relating to patní or other tenures) can be made only by a registered instrument.

(2) A registering officer shall not register any instrument purporting or operating to transfer by sale, gift or mortgage a permanent tenure unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called "the landlord's fee") of the following amount, namely:—

(*a*) when rent is payable in respect of the tenure, a fee of two per centum on the annual rent of the tenure: provided that no such fee shall be less than one rupee or more than one hundred rupees; and

(*b*) when rent is not payable in respect of the tenure, a fee of two rupees.

(3) When the registration of any such instrument is complete, the registering officer shall send to the Collector the landlord's fee and a notice of the transfer and registration in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

Transfer of permanent tenure by sale in execution of decree other than decree for rent.

13. (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, the Court shall, before confirming the sale under section 312 of the Code of Civil Procedure, require the purchaser to pay into Court the landlord's fee prescribed by the last foregoing section and such further fee for service of notice of the sale on the landlord as may be prescribed. XIV of 1882.

(2) When the sale has been confirmed, the Court shall send to the Collector the landlord's fee and a notice of the sale in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

Transfer of permanent tenure by sale in execution of decree for rent.

14. When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, the Court shall send to the Collector a notice of the sale in the prescribed form.

Succession to permanent tenure.

15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlord's fee